

***United States Court of Appeals
for the Second Circuit***



APPENDIX

ORIGINAL

77-1411

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

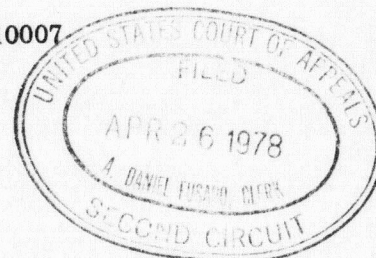
-against-

LEE DiCAMILLO,
Defendant-Appellant.

*On Appeal From the United States District Court
for the Eastern District of New York*

APPELLANT'S APPENDIX

FRANK A. LOPEZ
Attorney for Defendant-Appellant
Lee DiCamillo
233 Broadway
New York, N.Y. 10007
(212) 571-0805



PAGINATION AS IN ORIGINAL COPY

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Appellant's Appendix

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OFFENSE MO 0719
MEANOR Mis 207
FELONY Fel X

LEE DICAMILLO
(LAST FIRST MIDDLE)

JUVENILE

U.S. MAG CASE NO 77 M 351

U.S. TITLE/SECTION 21:952(a)841(a)(1) and 846
OFFENSES CHARGED Did conspire to import cocaine and to possess and to distribute same
ORIGINAL COUNTS 3

CLOSED

BAI HELF ASE
AMT Denied
Set XXX Pers Recog
PSA
\$ 1,000
Date 3-17-77
10% Deposit
Surety Bond
Bail Not Made
Collateral
Status Changed (See Docket)
3rd Prty Cust
Other

II. KEY DATES & INTERVALS

ARREST of U.S. Custody Req. High Risk Date 4-13-77
Summons Served
First Appearance 3-17-77
INDICTMENT Information 4-13-77
In Charging District
ARRAIGNMENT 4/22/77
1st Plea NG
Final Plea
TRIAL Trial Set For 7/5/77
Your Date 7/6/77
Trial Began
Trial Ended 7/18/87
Disposition of Charge 7/18/77
X Convicted
Acquitted
Dismissed
On Government Motion

SENTENCE
9.16.77
On All Charges
On Lesser Offense(s)
WOP
JWP

MAGISTRATE
Search Warrant Issued
Summons Issued
Arrest Warrant issued
COMPLAINT
OFFENSE (If Complaint)
DATE 3-17-77
INITIAL/NO. ASC/07AE
INITIAL APPEARANCE DATE
PRELIMINARY EXAMINATION Date Scheduled 3-28-77
OR Date Held
REMOVAL HEARING
WAIVED NOT WAIVED
INTERVENING INDICTMENT
Tape Number
OUTCOME
DISMISSED
X HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
HELLED FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
ASC/07AE
Deft. did possess with intent to distribute approximately 2100 gra of cocaine. T-21 USC Section 841(a)(1).

U.S. Attorney or Asst

ATTORNEYS

Defens: X CJA Ret Waived Self None / Other: PD CU

Victor Rocco

~~XXXXXXXXXXXX~~

Frank Lopez, Esq.
233 Broadway, NYC. 10007
571-0805

* Show last names and serial numbers of other defendants on same indictment/information

VICTOR RAUL AGUDELO-LLANO 2

DATE	(DOCUMENT NO.)	PROCEEDINGS
3-28-77		Hearing Waived as per AUSA Russo.
4-13-77		Before Chrein J - Indictment filed
4/22/77		Before Catoggio, J-case called-deft & counsel present pleas of not guilty entered case adjd to 5/20/77. Bail for deft Camillo-\$1,000.00PRB-for deft Agudelo-LLano \$10,000.00 surety. JLJ
5/3/77		Before Neaher, J-case called-deft not present-On motion of AUSA deft's bail is increased to \$40,000.00 surety-case adjd to 5/17/77 for status report. JLJ
5.16.77		Unsigned Copy of Letter filed addressed to Frank A. Lopez, from AUSA Russo dated 5.13.77 stating information was submitted in response to his requests of 4.28.77.
5.18.77		Notice of Motion for an Order suppressing any alleged contriband, directing the U.S. Atty. to serve upon the Counsel for Deft. LLANO, directing the U.S. Atty. to deliver to Court copies of Grand Jury Minutes returnable 5.31.77 at 10:00 A.M. filed and forwarded to Chambers.

EXCLUDABLE DELAY
(a) (b) (c) (d)

gp

DATE		IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
(DOCUMENT NO.)				Inter-Section (A)	Sub-Case & Date (B)	LR Code (C)	Total Days (D)
18.77		Notice of Motion to Quash Subpoena returnable 5.27.77 at 10:00 A.M. filed and forwarded to Chambers.					
7/31/77		Before Neaheer, J-case called-defts motion for discovery & inspection-aggued-granted-case adjd to 7/5/77 for trial.jlj			5/31/87T		
7/1/77		Notice of motion ret 7/5/77 for an order to suppress statements obtained by law enforcement officials in connection with the instant case etc.jlj			7/18/77		
7/6/77		Before Neaheer, J-case called-deft & counsel present jurors selected-case adjd to 7/7/77 for a suppression hearing.jlj					
7/7/77		Before Neaheer, J-case called-deft & counsel present suppression hearing begun-hearing contd to 7/8/77.jlj					
7/08/77		Before Neaheer, J-case called-deft & counsel present-suppression hearing begun-deft DiCamillos motion to suppress statements-denied-case adjd to 7/11/77 for trial-suppression hearing concluded.jlj					
7/11/77		Before Neaheer, J-case called-defts & counsel present-trial ordered & begun-trial contd-to 7/12/77.jlj					
-12-77		Before Neaheer, J - case called - deft & atty present - Interpreter Emil Rodriguez present - trial resumed - trial contd to July 13, 1977.					
-13-77		Before Neaheer, J - case called - trial resumed - trial contd to July 14, 1977.					
7/15/77		Before Neaheer, J-case called-deft & counsel present-trial resumed-defts move for dismissal of indictment and/or judgment of acquittal-motions denied-court charges jury-trial contd to 7/18/77.jlj					
7/18/77		Before Neaheer, J-case called-deft & counsel present-trial resumed-jury resumes deliberations-deft LLano renews his motion to dismiss the indictment-denied-order of sustenance filed-jury returns with the following verdict-deft DiCamillo-guilty as to counts 1 & 2 deft Dicamillo reserves motion until the date of sentence-bail contd as to deft DiCamillo-jury discharged trial concluded.jlj					
7.20.77		By Neaheer, J.- Order of Sustenance filed.					
9.16.77		Before Neaheer, J.- Case Called. Deft. & Counsel present. Deft. after being found GUILTY by Jury verdict is sentenced: the defendant is here by committed to the custody of the Attorney General or his duly authorized representative for imprisonment pursuant to Title 18, United States Code, Section 4205(b)(2) plus a special parole term of five (5) years on each Count to run concurrent. The defendant is informed of his right to appeal. Bail continued pending appeal. Form A filed.					
		continued.....					

FINE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

DICAMILLO, Lee

77 b
Yr.

219
Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELA	(a)	(b)	(c)	d
9.16.77	(Document No.) Judgment and Commitment filed. Certified Copies to Marshal and Probation.					
9.23.77	Notice of Appeal filed without fee.					
9.23.77	Duplicate copy of Notice of appeal, Form A together with Certified Copies of docket entries mailed to the Court of Appeals.					
11-15-77	Scheduling Order received from the Court of Appeals and filed, that the record on appeal be filed on or before 12-12-77. sk					
1-17-78	Application for modification of sentence under Rule 35 filed					
2-8-78	By Neaher, J - Order apptg counsel filed (Frank Lopez, Esq.)					
3-9-78	Scheduling order rec from the C of A filed. It is ordered that the record be filed on or before 3-28-78. fc					

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

77CR 219

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
UNITED STATES OF AMERICA

INDICTMENT

- against -

★ APR 1 1977 ★

Cr. No.

LEE DI CAMILLO and VICTOR RAUL AGUDELO-LLANO,
AGUDELO-LLANO,

(T.21, U.S.C., §§952(a) and
841(a)(1) & 846))

Defendants.

----- X
THE GRAND JURY CHARGES:

COUNT ONE

On or about the 16th day of March, 1977, within the Eastern District of New York and elsewhere, the defendants LEE DI CAMILLO and VICTOR RAUL AGUDELO-LLANO, together with others known and unknown to the Grand Jury, did knowingly and intentionally combine, conspire, confederate and agree to violate Sections 952(a) and 841(a)(1) of Title 21, United States Code.

1. It was part of said conspiracy that the defendants and co-conspirators would knowingly and intentionally import into the United States from places outside thereof, substantial quantities of cocaine, a Schedule II narcotic drug controlled substance.

2. It was further a part of said conspiracy that the defendants and co-conspirators would knowingly and intentionally distribute and possess with intent to distribute substantial quantities of cocaine, a Schedule II narcotic drug controlled substance.

3. It was further a part of said conspiracy that the defendants and co-conspirators would conceal the existence

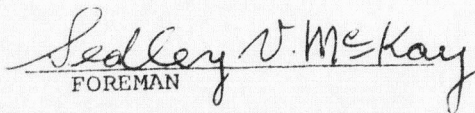
of the conspiracy and would take steps designed to prevent disclosure of their activities. (Title 21, United States Code, Section 846).

COUNT TWO

On or about the 16th day of March, 1977, within the Eastern District of New York, the defendant LEE DI CAMILLO did knowingly and intentionally import into the United States from Colombia, approximately 2100 grams of cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Sections 952(a) and 960(a)(1) and Title 18, United States Code, Section 2).

COUNT THREE

On or about the 16th day of March, 1977, within the Eastern District of New York, the defendant VICTOR RAUL AGUDELO-LLANO did knowingly and intentionally attempt to possess with intent to distribute approximately 2100 grams of cocaine, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Sections 841(a)(1) and 846 and Title 18, United States Code, Section 2)


FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

United States of America vs.

United States District Court

EASTERN DISTRICT OF NEW YORK

DEFENDANT

M' FILMED

LEE DI CAMILLO

DOCKET NO.

77-CR-219

JUDGMENT AND PROBATION/COMMITMENT ORDER

AO 245 (6/74)

In the presence of the attorney for the government
the defendant appeared in person on this date

MONTH DAY YEAR

SEPTEMBER 16, 1977

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

F. LOPEZ, ESQ.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☒ GUILTY. in Counts one (1) and two (2).

FINDING &
JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-21, U.S.C., Section 952 and 841(a)(1) and 846 in that on or about March 16, 1977 the defendant with another did knowingly and intentionally combine, conspire, confederate and agree to import into the United States substantial quantities of cocaine and would intentionally distribute and possess with intent to distribute a substantial quantity of cocaine and the defendant did import into the United States from Colombia, approximately Two Thousand One Hundred (2,100) grams of cocaine.

SENTENCE
OR
PROBATION
ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of four (4) years pursuant to Title 18, United States Code, Section 4205(b)(1) plus a special parole term of five (5) years on each Count to run concurrent. The defendant was informed of his right to appeal.

SPECIAL
CONDITIONS
OF
PROBATION

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ SEP 16 1977 ★
TIME A.M. _____
E.M. _____

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

Edward R. Neaher

Date Sept. 16, 1977

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Docket Number 77 Cr. 219 (ERN)

v.

LEE DI CAMILLO,

EDWARD R. NEAHER

(District Court Judge)

Defendant - Appellant.

NOTICE OF APPEAL

Notice is hereby given that LEE DI CAMILLO

the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other
(specify) Judgment entered in this action on September 16th, 1977Date September 20th, 1977

To:

HON. DAVID G. TRAGER, Esq.
United States Attorney
225 Cadman Plaza East
Brooklyn, New York 11201

Address

FRANK A. LOPEZ, Esq.
31 Smith Street
Brooklyn, New York 11201

Phone Number (212) 237-9500

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

▶ QUESTIONNAIRE

☒ I am ordering a transcript
☐ I am not ordering a transcript

Reason:

☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

▶ TRANSCRIPT ORDER

Prepare transcript of

☒ Pre-trial proceedings July 6th, 7th, 8th, 11th, 12th,
☒ trial 13th, 15th, 18th and September
☒ sentence 16th, 1977.
☐ Post-trial proceedingsDESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE)The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment ☒ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

September 20th, 1977

▶ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date

Signature

(Court Reporter)

ORIGINALA

7

(10)

Members of the Jury:

We are now at the stage of trial where you are about to undertake your final functions as jurors. Your duty is a serious and important one. In performing it you actively share with the court the responsibility of administering justice according to law and the evidence in the case. Your oath as jurors obliges you to discharge this final task in an attitude of complete fairness and impartiality -- and, as was emphasized by me when you were selected as jurors -- without bias or prejudice, for or against the Government or the defendants as parties to this controversy.

The case is important to the Government, since the enforcement of the criminal laws is of prime importance to the welfare of the community.

Obviously, it is equally important to the defendants, who are charged with a serious crime and have the right to receive a fundamentally fair trial -- the community has an interest in that too.

Let me add:

The fact that the Government is a party entitles it to no greater consideration than that

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EASTERN DISTRICT COURT REPORTERS

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BROOKLYN, NEW YORK 11201

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2 accorded to any other party to a litigation.

3 By the same token, it is entitled to no less
4 consideration.

5 All parties, Government and individuals alike,
6 stand as equals before the bar of justice.

7 Your final role is to decide and pass upon
8 the fact issues in the case.

9 You are the sole and exclusive judges of the
10 fact.

11 You determine the weight of the evidence;
12 you appraise the credibility of the witnesses;

13 You draw the reasonable inferences from the
14 evidence;

15 You resolve such conflicts as there may be
16 in the evidence.

17 I shall later refer to how you determine the
18 credibility of witnesses.

19 My final function is to instruct you as to the
20 law, and it is your duty to accept these instruc-
21 tions as to the law and to apply them to the facts
22 as you may find them.

23 With respect to any fact matter, it is
24 your recollection, and yours alone that governs.

25 As I have already told you, anything that

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852-7105

1
2 counsel, either for the Government or the defense,
3 may have said with respect to matters in evidence --
4 whether during the trial, in a question, in
5 argument or in summation -- is not to be substituted
6 for your own recollection of the evidence.

7 So, too, anything the Court may have said
8 during the trial, or may refer to during the course
9 of these instructions as to any matter in evidence,
10 is not to be taken in lieu of your own recollec-
11 tion.

12 There are certain principles of law which
13 apply in every criminal case, and to which I made
14 reference and emphasized at the time of your
15 selection as jurors.

16 I repeat them now.

17 The indictment is merely an accusation --
18 a charge. It is no evidence or proof of a
19 defendant's guilt.

20 Each defendant on trial has pleaded not
21 guilty. Thus, the Government has the burden of
22 proving the charges against each defendant beyond
23 a reasonable doubt. They do not have to prove
24 their innocence.

25 On the contrary, they are presumed to be

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innocent of the accusations contained in the indictment. This presumption of innocence was in their favor at the start of the trial, continued in their favor throughout the entire trial, is in their favor even as I instruct you now, and remains in their favor during the course of your deliberations in the jury room.

It is removed only if and when you are satisfied the Government has sustained its burden of proving the guilt of each defendant beyond a reasonable doubt.

The question that naturally comes up is -- what is a reasonable doubt?

The words almost define themselves -- that there is a doubt founded in reason and arising out of the evidence in the case, or the lack of evidence.

It is a doubt which a reasonable person has after carefully weighing all the evidence.

Reasonable doubt is a doubt which appeals to your reason; your judgment; your common sense and your experience. It is not caprice, whim, speculation, conjecture or suspicion; it is not an excuse to avoid the performance of an unpleasant duty; it is not sympathy for a defendant.

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2 If, after a fair and impartial consideration
3 of all the evidence, you can, candidly and honestly
4 say you are not satisfied of the guilt of a
5 defendant -- that you do not have a steadfast
6 conviction of his guilt -- in sum, if you have
7 such uncertainty a doubt as would cause
8 you, as prudent persons, to hesitate before acting
9 in matters of importance to yourselves, -- then
10 you have a reasonable doubt, and in that circum-
11 stance it is your duty to acquit.

12 On the other hand, if after such an im-
13 partial and fair consideration of all the evidence,
14 you can, candidly and honestly, say you do have
15 a steadfast abiding conviction of a defendant's
16 guilt -- such a conviction as you would be
17 willing to act upon, in important and weighty
18 matters in the personal affairs of your own life,
19 then you have no reasonable doubt, and under
20 such circumstances, it is your duty to convict.

21 Onemore final word on this subject.

22 Reasonable doubt does not mean a positive
23 certainty, or beyond all possible doubt.

24 If that were the rule, few persons, however
25 guilty they might be, would be convicted.

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2 It is practically impossible for a person
3 to be absolutely and completely convinced of any
4 controverted fact, which by its nature is not
5 susceptible of mathematical certainty.

6 In consequence, the law in a criminal case
7 is that it is sufficient if the guilt of a defendant
8 is established beyond a reasonable doubt -- not
9 beyond all possible doubt.

10 As I have said you must bear in mind that a
11 reasonable doubt may arise not only from the evi-
12 dence produced, but also from a lack of evidence.
13 Since the burden is always upon the prosecution to
14 prove the accused guilty beyond a reasonable
15 doubt of every essential element of the crime
16 charged, a defendant has the right to rely upon
17 failure of the prosecution to establish such
18 proof. A defendant may also rely upon evidence
19 brought out on cross-examination of witnesses for
20 the prosecution. And if two conclusions can
21 reasonably be drawn from the evidence, one of
22 innocence and one of guilt, the jury must adopt
23 the one of innocence. A defendant is never to be
24 convicted on mere suspicion or conjecture.

25 Now, let's turn to the charges against the

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832-7103

defendants on trial.

Those charges are based upon certain federal statutes which are part of an Act of Congress often referred to as the Federal Drug Act.

The Congressional purpose expressed in the Federal Drug Act was to exercise federal control in order to prevent traffic in or improper use of drugs having a substantial and detrimental effect on the health and general welfare of the American people.

Because the Act covers a wide variety of drugs and substances having drug-like effects, the term "Controlled substance" is used to denote those products which are subject to criminal sanctions.

The defendants Lee DiCamillo and Victor Agudelo-Llano are charged in Count one of the indictment with conspiring knowingly and intentionally to import into the United States on or about March 16, 1977, substantial quantities of cocaine, a narcotic drug controlled substance with the object of possessing and distributing that cocaine contrary to law. That charge is based upon provisions of the Federal Drug Act which make it a crime to knowingly and intentionally

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import a controlled substance into the United States from a place outside thereof; or to attempt or conspire to commit such an offense, or to possess a controlled substance with intent to distribute it without proper authorization.

The word "import" as used in the Drug Act means any bringing in or introduction of a controlled substance to this country.

Cocaine is a "Narcotic drug controlled substance" under the Federal Drug Act. The parties have stipulated as to what a D.E.A. chemist, if called as a witness, would testify regarding his examination of the white powder in evidence. You must be satisfied beyond a reasonable doubt, however, that the white powder was in fact cocaine; since that is an essential element of the Government's proof with respect to all counts of the indictment.

First, I will explain why the indictment contains a separate charge of conspiracy.

Conspiracy is an offense separate from the commission of any offenses that may have been committed pursuant to the conspiracy. That is because the formation of a conspiracy, of a partnership, in criminal purposes, is in and of

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2 itself pronounced a crime by the statute. A
3 conspiracy is a combination or agreement of two
4 or more persons to accomplish an unlawful purpose
5 by their concerted action. The essence of the
6 charge of conspiracy is first, an understanding
7 among two or more persons that they will act
8 together to accomplish a common objective which
9 they know is unlawful, plus, second, the doing
10 of an overt act in furtherance of the conspiracy.
11 The understanding does not have to be a formal
12 or express one. The understanding essential to
13 the finding of a conspiracy exists if by whatever
14 means, tacit or outspoken, the alleged members of
15 the alleged conspiracy have arranged to unite
16 their several efforts to accomplish a common
17 object that they know is unlawful.

18 The overt act required to be proved may
19 be an act which, considered by itself, is an
20 innocent act. It need not be an act of the
21 particular defendants charged or an act known to
22 either of them, and it may be an overt act committed
23 before they became members of the conspiracy.
24 The overt act, however, must have been performed
25 before the defendant ceased to be a member of

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852-7105

1
2 the conspiracy.

3 One may become a member of a conspiracy
4 without having full knowledge of all of the details
5 of the conspiracy and without knowing the identi-
6 ties of the other conspirators. But a person who,
7 having no knowledge of a conspiracy, acts in a
8 way which furthers some object of the conspiracy,
9 does not thereby become a conspirator.

10 Mere association of a defendant with an
11 alleged conspirator does not establish his
12 participation in a conspiracy, nor is knowledge
13 without participation sufficient.

14 Before you may find that a defendant
15 became a member of a conspiracy, the evidence in
16 the case must show beyond a reasonable doubt that
17 the conspiracy was formed, and that the defendant
18 helped to carry the plan forward knowing the
19 principal terms of the plan and that it was un-
20 lawful and having the intent to advance or further
21 some object of the conspiracy.

22 One who so joins an existing conspiracy
23 is charged with the same responsibility as if he
24 had been one of the originators or instigators of
25 the conspiracy. It is not necessary that all

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EASTERN DISTRICT COURT REPORTERS

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832-7103

of the named conspirators become such at the same time nor is it necessary that they all continue in the conspiracy until it ends.

In determining whether a conspiracy existed, you should consider the actions and declarations of all who are identified in the evidence as possible participants. However, in determining whether either defendant on trial was a member of the conspiracy, if any, you should consider only his acts and statements. A defendant cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed, and that he was one of its members.

Applying those principles to this case, each of our essential elements are required to be proved by the Government beyond a reasonable doubt in order to establish the offense of conspiring to import and possess a controlled substance as charged in Count One of the indictment.

First: That the conspiracy described in the indictment was knowingly and wilfully formed by two or more persons, and was existing at or about the time alleged;

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Second: That the defendant whose guilt or innocence you are considering knowingly and wilfully became a member of the conspiracy.

Third: That the object of the conspiracy was to commit an unlawful act, that is, bring into the United States a controlled substance and possess it with intent to distribute it in violation of laws and;

Fourth: That at least one of the conspirators committed an overt act, that is, knowingly did something to further the object of the conspiracy.

The indictment charges that the conspiracy took place on or about March 16, 1977. The exact date is not critical, if you find beyond a reasonable doubt that the conspiracy charged existed at any time about that date.

As to the first element, you will note that the conspiracy must have been knowingly and wilfully for 1, and that to satisfy the second element the particular defendant you are considering must have knowingly and wilfully participated in the conspiracy if you find it was formed.

An act is done knowingly if done voluntarily

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852-7105

intentionally, and not because of mistake or accident or other innocent reason.

To act or participate wilfully means to act or participate voluntarily and intentionally, and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, to act or participate with the bad purpose either to disobey or to disregard the law.

If you are satisfied from the evidence beyond a reasonable doubt that a conspiracy as described in the indictment existed, you must then consider the evidence relating to each defendant named in the conspiracy count separately and decide whether that evidence proves beyond a reasonable doubt that he was a member of the conspiracy.

Looking solely at the personal acts and statements of each defendant, then, you must determine whether such evidence establishes beyond a reasonable doubt that he associated himself in the overall conspiracy charged in the indictment with specific criminal intent and with actual knowledge that the purpose of the conspiracy

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1 was to violate the narcotics laws. Mere general
2 activity which assisted others who may have been
3 members of the described conspiracy is not enough
4 to satisfy the requirement unless you are satis-
5 fied beyond a reasonable doubt that he thereby
6 intended to further the purpose of a criminal
7 conspiracy and consciously intended to associate
8 himself with it. Mere suspicion is not enough.
9 You must be satisfied beyond a reasonable doubt
10 that the defendant in question consciously
11 associated himself in a conspiracy with specific
12 criminal intent and consciously sought to have
13 the conspiracy accomplish its criminal purpose.
14 It is important to remember that in deciding
15 this question of participation you must turn away
16 from and put aside statements of other defendants
17 or alleged co-conspirators or evidence of their
18 actions and look instead at the evidence of the
19 words and deeds of the one defendant in question.
20 This independent proof of his own actions must
21 be substantial and not slight. If there is no
22 proof of a defendant's participation in a con-
23 spiracy other than statements of other defendants
24 who are named or identified as co-conspirators
25

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2 or you have a reasonable doubt as to that proof,
3 you would have to acquit ~~that~~ defendant on Count
4 one.

5 I caution you again that mere association
6 with persons engaged in a criminal enterprise
7 or presence at the scene of their crime is not
8 sufficient to establish a defendant's knowing
9 entry into a conspiracy with them with the intent
10 to commit specified crimes. Even if you believe
11 that while in their company a defendant learned
12 of the criminal plan of others or knew of what
13 they were up to, this alone would not make him a
14 member of their conspiracy. Before you find that he
15 participated in the conspiracy you must find beyond
16 a reasonable doubt that he in some way associated
17 himself with the venture and sought by his actions
18 to make it succeed. If he did not, then he
19 must be acquitted of the conspiracy charge.

20 Whenever it appears beyond a reasonable
21 doubt from the evidence in the case that a
22 conspiracy existed, and that a defendant was one
23 of the members, then the statements thereafter
24 knowingly made and the acts thereafter knowingly
25 done, by any person likewise found to be a member,

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2 may be considered by the jury as evidence in the
3 case as to the defendant found to have been a
4 member, even though the statements and acts may have
5 occurred in the absence and without the knowledge
6 of the defendant, provided such statements and
7 acts were knowingly made and done during the
8 continuance of such conspiracy, and in furtherance
9 of some object or purpose of the conspiracy.

10 Otherwise, any admission or incriminatory
11 statement made or act done outside of the court, by
12 one person, may not be considered as evidence
13 against any other person who was not present
14 and did not hear the statement made, or see the
15 act done.

16 Therefore, statements of any conspirator,
17 which are not in furtherance of the conspiracy,
18 or made before its existence, or after its termina-
19 tion, may be considered as evidence only against
20 the person making them.

21 In your consideration of the evidence in the
22 case as to the offense of conspiracy charged, you
23 should first determine whether or not the
24 conspiracy existed, as alleged in the indictment.
25 If you conclude that the conspiracy did exist,

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2 you should next determine whether or not an
3 accused defendant wilfully became a member of the
4 conspiracy.

5 If it appears beyond a reasonable doubt
6 from the evidence in the case that the conspiracy
7 alleged in the indictment was wilfully formed, and
8 that the defendant wilfully became a member of the
9 conspiracy either at its inception or afterwards,
10 then there may be a conviction even though the
11 conspirators may not have succeeded in accomplishing
12 their common object or purpose and in fact may have
13 failed of so doing.

14 The extent of any defendant's participation,
15 moreover, is not determinative of his guilt or
16 innocence. A defendant may be convicted as a
17 conspirator even though he may have played only
18 a minor part in the conspiracy.

19 This brings us to the third essential
20 element, namely, whether the object of the conspiracy
21 was to bring into the United States a prohibited
22 controlled substance. If you find beyond a
23 reasonable doubt that the substance contained in
24 the several plastic bags admitted into evidence as
25 Government exhibits is in fact cocaine then I

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2 instruct you as a matter of law that that substance
3 would be a controlled substance within the meaning
4 of the Drug Act, the importation of which is prohib-
5 ited by law.

6 Turning now to the fourth element, the
7 commission of an overt act in furtherance of
8 the conspiracy charged, you will recall that
9 sometime in February 1977 the defendant DiCamillo
10 traveled to Bogota, Colombia, and that the
11 defendant Llano signed a receipt for the delivery
12 of the shipment of furniture on March 16, 1977.
13 Although the gist of the offense of conspiracy is
14 the unlawful agreement between two or more
15 individuals, nonetheless, you will have to find
16 beyond a reasonable doubt that DiCamillo's trip
17 to Bogota or Llano's act was in furtherance of
18 an existing conspiracy and not an unrelated
19 individual act.

20 To sum up with respect to Count one, as the
21 evidence stands in the case, in order to find a
22 conspiracy, you must find beyond a reasonable
23 doubt that both defendants on trial and perhaps
24 others named in the evidence wilfully conspired or
25 agreed that one or more of them would import cocaine

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2 into the United States concealed in such a manner
3 as to evade discovery by the Customs authorities
4 and that one of them would possess it with intent to
5 distribute it in violation of law. If you do not
6 find that there was such an agreement or under-
7 standing, then you cannot find that a conspiracy
8 existed.

9 Whether a defendant knowingly and
10 intentionally participated in the alleged conspiracy
11 presents an issue of fact. Proof of the requisite
12 knowledge and intent on the part of an alleged
13 conspirator need not be made by direct evidence.
14 By direct evidence is meant the testimony of a
15 person who claims to have knowledge derived
16 through the senses, for example, an eyewitness.

17 The existence of the conspiracy and a
18 defendant's participation in it may be shown by
19 circumstantial evidence, by which we mean the
20 existence of facts and circumstances from which the
21 existence of other facts and circumstances may
22 reasonably be inferred.

23 As I have said, explicit language or
24 words are not required to indicate assent or attach-
25 ment to a conspiracy. The essence of the conspiracy

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2 is the common plan or design.

3 In determining whether there has been an
4 unlawful agreement, you must judge acts and
5 conduct of the alleged co-conspirators which are
6 done to carry out an apparent criminal purpose.
7 These include conversations and discussions among
8 them to that end. If you find circumstances of
9 secrecy, or attempts to conceal the true nature of
10 a transaction, these may be considered by you as
11 circumstantial evidence of criminal intent.

12 I remind you again that mere association
13 of a defendant with an alleged conspirator or
14 conspirators does not establish his participation
15 in a conspiracy, if you find one did exist, nor
16 is knowledge of illegal acts of others sufficient.

17 Nor does similarity of conduct among
18 various persons, and the fact that they have
19 assembled together and discussed common aims and
20 interests necessarily establish proof of the existence
21 of a conspiracy.

22 What is necessary, as I have already said,
23 is that a defendant participate in the conspiracy
24 with knowledge of at least some of its purposes
25 and with intent to aid the accomplishment of
its unlawful ends. A 27

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1 A single act may be enough to draw a defendant
2 within the ambit of a conspiracy, provided you are
3 convinced beyond a reasonable doubt that a defendant
4 knew of the conspiracy and associated himself with
5 it. If you are not so convinced, then you must
6 acquit both defendants, since a defendant cannot
7 conspire with himself because at least two persons
8 are needed before there can be a conspiracy.
9

10 Now, let us turn to Count Two of the
11 indictment, which charges the defendant DiCamillo
12 alone with knowingly and intentionally importing
13 into the United States from Colombia some 2,000
14 grams of cocaine in violation of the Federal Drug
15 Act. The importation is alleged to have occurred
16 on or about March 16, 1977.

17 Before the defendant DiCamillo may be
18 convicted on the charge in Count Two, the Govern-
19 ment must establish beyond a reasonable doubt
20 the following essential elements:

21 First: That on or about March 16, 1977
22 a quantity of cocaine was brought into the
23 United States concealed in a shipment of furniture.

24 Second: That DiCamillo knew that the
25 cocaine was being illegally imported and was

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instrumental in bringing about the importation or knowingly and intentionally aided and abetted the importation by other persons:

I have already explained the meaning of "Importation" to you, and that to act knowingly is to do so voluntarily and intentionally and not because of mistake or accident or other innocent reason. I have also explained that to act intentionally means to do so with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, to act or participate with the bad purpose, either to disobey or to disregard the law.

You may wonder why I made reference to aiding and abetting importation of cocaine. The answer to that question is found in another United States criminal statute known as the "Aiding and abetting statute", on which the Government relies in charging DiCamillo under Count Two. That statute reads as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

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"(b) Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Under the foregoing statute, it is not necessary for the Government to show that a defendant personally committed the crime charged. A person who aids and abets another person to commit an offense is just as guilty of the offense as if he himself committed every act related to it.

Accordingly, you may find DiCamillo guilty of the substantive offense of unlawful importation if you find beyond a reasonable doubt as the Government charges, that DiCamillo either was instrumental in bringing about the importation or that he aided and abetted others to do so.

In order to find that a defendant aided and abetted you must be satisfied beyond a reasonable doubt that the defendant in some way knowingly associated himself with a criminal venture in a meaningful way; that he knowingly participated in it as something he wished to bring about, and by some action to make it succeed--that he had a stake in its outcome.

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In other words, if one, fully aware of what he

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2 is doing, plays a significant role in furthering a
3 transaction prohibited by law, he is an aider and
4 abettor, and as such, he is equally guilty with the
5 person or persons who directly performed the illegal
6 acts which constitute the crime.

7 One final word on the subject of aiding and
8 abetting -- the mere presence of a defendant at the
9 place where a crime may have been committed or planned,
10 or where events which may be part of a conspiracy
11 may have transpired, is not a sufficient basis to
12 find that such a defendant aided and abetted the
13 commission of a crime or knowingly participated in a
14 conspiracy and intended to further its aims. The law
15 requires proof beyond a reasonable doubt that a
16 defendant knowingly played a part as aider and
17 abettor. Mere knowledge or association does not make
18 out the offense of aiding and abetting.

19 Now let us turn to Count Three of the indict-
20 ment which charges the defendant, Llano alone
21 with knowingly and intentionally attempting to possess
22 with intent to distribute some 2,000 grams of cocaine
23 March 16, 1977.

24 Before Llano may be convicted on the charge in
25 Count Three, the Government must establish beyond a

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reasonable doubt the following essential elements:

First: That Llano knowingly and intentionally received delivery of the furniture knowing that it contained cocaine and with the specific intent of acquiring possession of the cocaine.

Second: That he received the furniture with the further intent that the cocaine concealed therein would be distributed to other persons.

Again, my previous explanation of "Knowingly" and "Intentionally" applies to this charge in Count Three.

You will note that Llano is not charged with possession of the cocaine. This would not be possible in his case because possession involves an element of control, and here control was at all times with the D.E.A. Agents who had seized the shipment of furniture. Thus it is that Llano is charged with attempting to possess the concealed cocaine with intent to distribute it.

To "Attempt" to commit an offense is itself a crime, for it means to wilfully do some act in an effort to bring about or accomplish something the law forbids to be done.

The phrase "With intent to distribute" simply

means that the person possessing or attempting to possess cocaine is not acquiring it for his own personal use, but with the intention of selling or delivering it to other persons.

In charging Llano under Count Three the Government also relies on the aiding and abetting statute I have previously explained. The same principles apply to Llano.

Again, you will have to decide whether Llano's acts and statements in light of the surrounding circumstances satisfy you beyond a reasonable doubt that he attempted to gain possession of the furniture with knowledge that it contained cocaine, and that he did so for unlawful purposes of his own or to aid and abet other persons to violate the narcotics laws. If you are so satisfied, you will convict Llanos; if not, you must acquit him.

Now, with the foregoing instructions in mind, let us now turn to the evidence bearing upon the charges in the indictment. By evidence I mean, of course, all the testimony you have heard except that which I have instructed you to disregard, whether brought out on direct examination or cross-examination; all the exhibits admitted into evidence regardless of who introduced them; and all stipulations of fact.

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I made reference here to the fact that the defendants and Government counsel have agreed on a stipulation which I believe has also been received in evidence regarding what a D.E.A. chemist would testify to concerning the white powder. I caution you that that entering into the stipulation does not mean that the defendants admit any knowledge or participation in respect of such white powder or what it may prove to be in light of the stipulation. In fact, they deny such knowledge. Even though there is no dispute about the nature of the exhibits, your function as judges of the fact requires you to find beyond a reasonable doubt that the substance is in fact cocaine hydrochloride. If you so find, then I instruct you as a matter of law it would fulfill the requirement of a narcotic controlled substance as specified in the Drug Act.

Since counsel for the Government and the defendants have reviewed in detail the evidence and emphasized their respective contentions I do not consider it necessary to expand upon or to add any comments of my own, except, I wish to point out what must be obvious to you, namely, that the key question in this case is whether or not one or both

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2 defendants knew that the shipment of furniture
3 contained a concealed quantity of cocaine.

4 The fact of knowledge may be established by
5 direct or circumstantial evidence just as any other
6 fact in the case. Medical science as yet has devised no
7 instrument by which you can go back and determine what
8 purpose the defendant DiCamillo had in mind when he
9 arranged for the furniture to be shipped to New York.
10 Rarely is direct proof available that one had know-
11 ledge of a fact or intended to bring about a result.

12 The intent with which an act is done is often
13 more clearly and conclusively shown by the act itself
14 or by a series of acts than by words or explanations
15 of the act long after its occurrence. Frequently, the
16 acts of individuals speak their intentions more clearly
17 than do their words.

18 Hence, it is logical for a jury to consider the
19 old adage, "Actions speak louder than words."

20 Accordingly, intent, wilfulness and knowledge
21 may be established by the surrounding facts and
22 circumstances around the time the acts occurred or the
23 events took place and the reasonable inferences to
24 be drawn therefrom. This is referred to as circum-
25 stantial evidence and, if believed, it is as acceptable

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as direct evidence.

Guilty knowledge cannot be established by demonstrating inadvertence, carelessness, or other innocent reasons on the part of the defendant. This applies whenever reference is made to knowledge and wilfulness in this charge. However, it is not necessary that the Government prove to a positive certainty that the defendants knew of the presence of the cocaine; its burden is met if it proves the facts of knowledge beyond a reasonable doubt. But if after careful and impartial consideration of all the evidence, you find that it reasonably permits either of two conclusions--one of innocence, the other of guilt, then you must adopt the one of innocence.

Now, it must be apparent to you that the versions of the Government and defense are in sharp divergence on key points and that critical issues of fact and credibility are raised in the testimony.

You are called upon to decide the fact issues here.

How do you decide these.

Now I think you understand why at the start of the trial I suggested that it would be desirable and important for you not only to listen, but to look at

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the witnesses as they testify.

Your determination of the issue of credibility very largely must depend upon the impression that a witness made upon you as to whether or not he was telling the truth or giving you an accurate version of what occurred.

I often say to jurors, when you walk in the door of that courtroom and sit in the jury box, while the trial is going on, when you are deliberating in the jury room -- you have your common sense, your good judgment and your experience with you.

You decide whether or not a witness was straightforward and truthful; whether he attempted to conceal anything; whether he has a motive to testify falsely; whether there is any reason why he might color his testimony.

In other words, what you try to do, to use the vernacular, is to size a person up just as you would do, as I have said before, in any important matter where you were undertaking to determine whether or not a person is truthful, candid and straightforward.

In passing upon the credibility of a witness, you may also take into account inconsistencies or contradictions as to material matters in his own

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testimony, or any conflict with that of another witness,

A witness, however, may be inaccurate, contradictory, or even untruthful in some respects, and yet be entirely credible in the essentials of his testimony.

The ultimate question for you to decide in passing upon credibility is -- did the witness tell the truth here before you as to essential matters?

The fact that some of the Government witnesses were Government agents does not entitle their testimony to any greater weight or consideration than that afforded to any other witness in the case.

You will evaluate their credibility the same way you do that of any other witness.

If you find that any witness -- and this applies alike to Government and defense -- wilfully testified falsely as to any material fact, you have a right to reject the testimony of that witness in its entirety, or you may accept that part or portion which commends itself to your belief as credible.

The law permits, but does not require, a defendant to testify in his own behalf.

The defendants DiCamillo and Llano have taken the witness stand.

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Obviously each of those defendants has a deep, personal interest in the result of his prosecution.

Interest creates a motive for false testimony; in appraising their credibility, you may take that fact into consideration.

However, it by no means follows that simply because a person has a vital interest in the end result that he is not capable of telling a truthful, candid and straightforward story.

It is for you to decide to what extent, if at all, a defendant's interest has affected or colored his testimony.

In your consideration of the evidence, it is your duty to give separate, personal consideration to the case of each defendant. When you do so, you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely against the other defendant. Each defendant is entitled to have his case determined from evidence as to his own acts and statements and conduct, and any other evidence in the case which may be applicable to him.

Guilt or innocence is a personal matter. Each defendant has the right to the same consideration

on your part as if he were being tried alone.

The charges against each of them stand or fall upon the proof, or lack of proof against them, and not against a co-defendant.

During the course of the trial, the attorneys at various times have objected to certain questions, have moved to strike answers, and taken other procedural positions before you.

These are matters of technical procedure that are the proper concern of the attorneys and should not concern you.

I instruct you that you are not to draw any inferences from the fact that attorneys have made objections and motions before you during the trial.

The Government, to prevail, must prove the essential elements by the required degree of proof, as already explained in these instructions.

If it succeeds, your verdict should be guilty; if it fails, it should be not guilty.

The verdict in each instance must be unanimous.

Your function is to weigh the evidence in the case, and to determine the guilt or innocence of the defendants solely upon the basis of such evidence and these instructions.

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Under your oath as jurors, as I mentioned previously, you cannot allow a consideration of the sentence which may be imposed upon a defendant, if he is convicted, to enter into your deliberations, or to influence your verdict in any way.

Your duty is to decide the case solely and only upon the evidence.

In the event of a conviction, the duty of imposing sentence rests solely with the Court.

Each juror is entitled to his or her own opinion, but each should, however, exchange views with his fellow jurors.

That is the very purpose of jury deliberation -- to discuss and to consider the evidence; to listen to the arguments of fellow jurors; to present your individual views; to consult with one another; and to reach an agreement based solely and wholly on the evidence, if you can do so without violence to your own individual judgment.

Each one must decide the case for himself or herself after consideration with his or her fellow jurors.

But you shouldn't hesitate to change an opinion which, after discussion with your fellow jurors, appears erroneous.

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2 However, if after carefully considering all
3 the evidence, and the arguments of your fellow jurors,
4 you entertain a conscientious view that differs
5 from others, you are not to yield your judgment
6 simply because you are outnumbered or outweighed.

7 Your final vote must reflect your conscientious
8 view as to how the issues should be decided.

9 The charge here is most serious.

10 The just determination of this case is important
11 to the public; it is equally important to these
12 defendants.

13 Under your oath as jurors, you must decide
14 this case without fear or favor and solely, as I have
15 stated any number of times, in accordance with the
16 evidence and the law.

17 If the Government has failed to carry its burden
18 as to a defendant, your sworn duty is to acquit;
19 if it has carried its burden as to a defendant, you
20 must not flinch from your sworn duty -- you must
21 convict.

22 Now, members of the jury, I realize the
23 hour is getting late. It's almost ten of six. It
24 would be my purpose to ask you to deliberate this
25 evening, unless any of you feel that that would be

1 something you would prefer not to do. The
2 alternative, of course, would be to return here on
3 Monday and begin your deliberations, or resume your
4 deliberations at that time. I leave it up to
5 you jurors to exercise the option. I'm going to excuse
6 you for a few minutes, in any event so that I may
7 give counsel an opportunity to inform me as to whether
8 I have misspoken any of my charge, or there is something
9 that they would wish me to consider added. So for
10 the time being, you may retire to the jury room and
11 you may think about that.

12 If you wish to stay this evening, I think
13 arrangements can be made to have coffee and sandwiches
14 brought in for your sustenance. It would be, I think,
15 if I were to send you out to a restaurant at this
16 hour of the night, you'd spend most of the evening
17 getting there and coming back. So if you're going to
18 deliberate, you will have to get along on sandwiches
19 and beverages.

20 (Whereupon, the jury retired from the courtroom.)

21 THE COURT: Well, gentlemen?

22 MR. LOPEZ: I have no exceptions to the charge.

23 Your Honor, the only thing -- perhaps I didn't
24 hear it clearly -- was the jury advised that it's a
25 unanimous verdict?

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1 THE COURT: Yes.

2 MR. LOPEZ: It was.

3 Okay, your Honor.

4 THE COURT: Unanimous in each instance as to
5 each defendant as to each count.

6 MR. LEWIS: No exceptions, your Honor.

7 MR. LOPEZ: No exception.

8 MR. RUSSO: No problems either.

9 THE COURT: Well, that's nice. Now, of course
10 we don't have the transcript transcribed here.

11 Swear in the marshals.

12 (Whereupon, two United States Marshals were
13 duly sworn by the clerk of the Court.)

14 THE COURT: I think, Marshal, you can bring
15 them in or ask them if they have made up their minds.
16 They don't have to come in if they have made up their
17 minds.

18 (Pause.)

19 THE MARSHAL: They want to return on Monday.

20 THE COURT: Well, I think that's the answer.
21 Have they come in for a minute. It will be of importance
22 now.

23 MR. LEWIS: Your Honor, the interpreter just
24 walked out for a minute. Can you just wait?

25 I think he went to the phone.

1 (Whereupon, the interpreter entered the
2 courtroom.)

3 (Whereupon, the jury entered the courtroom.)

4 THE COURT: Well, members of the jury, the
5 marshal has already informed me of your unanimous
6 decision, and I suppose I can't blame you under the
7 circumstances. I called you in to remind you that
8 this is now the critical stage of your function as
9 jurors, and it is therefore most important that you
10 not discuss this case with anyone at home or any of
11 your friends, or even let it not come up in your
12 conversation, because if somebody finds you're jurors
13 out in deliberation, they are bound to give you some
14 advice or you may be trapped into asking them what
15 do you think about it. So you must refrain from that.

16 Secondly, we had a defection of two jurors,
17 so that we now have no alternate left. I will say
18 prayers over the weekend that you all remain healthy
19 and return here on Monday, because if we don't
20 have twelve jurors, we can't proceed with the case.

21 Don't use skateboards or go out into the
22 surf. Is it a hardship for any of you to return
23 here at Monday morning at 9:30? Because really,
24 the earlier you start, the better. And then we
25 will arrange your luncheon if that becomes necessary

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1 on Monday so you don't have to worry about that.

2 All right.

3 JUROR NUMBER ONE: 9:30?

4 THE COURT: I say, can you make it at 9:30?

5 Others have indicated that they could.

6 We'll give you a little earlier start, and
7 you come right to your deliberation room. The marshals
8 will see that you are all there. You can't start
9 deliberating until all 12 are present, and then let
10 me say that by custom, your juror number one is your
11 foreman. You will have pads and pencils, and you will
12 be able to communicate with the Court by writing notes,
13 including any announcement that you have arrived at a
14 verdict. You don't tell me what it is. You just say
15 that we have reached a verdict, and that's all I
16 need to know. The exhibits will be -- you may have
17 the exhibits in the jury room with you. You may have
18 a copy of the indictment if you wish. Also, although
19 we don't have the testimony transcribed in typed
20 form, the reporter who has taken it will be available
21 to read back portions, should you require that.

22 I don't wish to discourage you from asking,
23 but I do ask you to bear in mind that it usually --
24 I find it is not helpful to have wholesale testimony
25 read back. But something that when something comes up

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1 in your deliberations, that a point needs to be
2 resolved, who said this, or did he say that, ask
3 for that to be read back, and that will settle
4 the matter. Do you understand? And then we won't
5 take up too much time just listening to the testimony
6 all over again.

7 Unless you feel it is essential to your function,
8 your performing, then you may have it. That's all
9 I have to say, except to bid you a good weekend, and
10 stay healthy.

11 (Whereupon, Court stood in recess for the day
12 at 6 o'clock P.M.)

13 * * * * *

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25 A 47

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Q By whom are you employed, sir?

3

A United States Customs Service.

4

Q And in what capacity are you employed?

5

A I'm a senior inspector.

6

Q And how long have you been employed?

7

A Since March of 1970, as an inspector, and

8

since November of '63, as a customs employee.

9

Q And what are your responsibilities, Inspector

10

Bataracco?

11

A At the time, I'm now assigned to the Narc-

12

otics Unit, of the tactical team at the Kennedy Airport.

13

Q Were those same responsibilities yours,

14

on March 16, of this year?

15

A They were.

16

Q Let me direct your attention to that date,

17

Inspector, and ask whether you were on duty?

18

A I was on duty, on March 16.

19

Q And at approximately what time of day,

20

did you report?

21

A 8:00 A.M.

22

Q Tell the jury what you did, what your re-

23

sponsibilities were?

24

A Well, as part of the team, we have two nar-

25

cotic detecting dogs. However, they were not available

1 for the day, so I have a partner, another inspec- 31
2 tor, we completed our paper work, and we went out to do
3 our examinations of various cargo rooms.

4 Q During that day, did you arrive at the
5 Pan American cargo area?

6 A Right after lunch we did, yes.

7 Q Approximately what time of day?

8 A 1:00, 1:30 the latest.

9 Q Will you tell the Jury what you observed
10 when you did arrive there?

11 A As we drove into the parking lot, we saw
12 a Dayhill Moving and Storage truck, and they had some
13 furniture alongside of the truck. My partner decided
14 that this warranted a little better examination, so we
15 parked, and went up to the truck driver, and asked if
16 the merchandise had been cleared. He said it was clear,
17 and he presented me with a handful of receipts and papers.

18 Q Could you tell the Jury, approximately
19 where the furniture was located?

20 A Well, it was maybe half or three quarters
21 of the shipment was on the truck, or alongside of it, and
22 the rest was in the warehouse of Pan American.

23 Q About how many pieces were involved in
24 this particular shipment?

25 A I think there was 28, or 26.

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Q When you say you worked on them, what did you do?

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A We have part of the kit, that we have several drills in, and touch up equipment. We drilled several of the chairs on the truck, and one of the pieces was a large round table with a huge pedestal. We drilled that out, five or six times, and they were all negative. When we proceeded in the warehouse, my partner started working on one piece of furniture, I worked on the hutch. I put a hole on the bottom of the shelf, and when the drill came out, there was a white substance attached to it.

MR. RUSSO: At this time, I would ask Government's Exhibit 1, marked for identification, be received in evidence.

THE COURT: Show it to Counsel.
(The Counsel then proceeded to look at the documents.)

MR. LOPEZ: No objection.

MR. LEWIS: No objection, on behalf of the Defendant, Llano.

THE COURT: All right, mark it.

THE CLERK: Government's Exhibit No.1, received in evidence.

MR. RUSSO: Again your Honor, for the purposes of clarity in the record, there is one

1 and Storage. Others were right beside the truck, 44
2 and the hutch, and the buffet, and a few boxes, were in
3 Pan American's warehouse.

4 Q And sir, do you know, whether the goods
5 that you saw and inspected, at that time, were the goods
6 that were covered by the airway bill, which is Govern-
7 ment's Exhibit 1, in evidence?

8 A This was the merchandise presented by Pan
9 American, for examination on this airway bill.

10 Q To whom is that shipment consigned?

11 A Lee Di Camillo, Dahill Moving and Storage
12 Company. 602 Coney Island Avenue, Brooklyn.

13 Q Could you tell us, whether there were any
14 pieces of shipment that were present on March 16, but
15 were not to be viewed by the jury, was that in the ship-
16 ment we just saw downstairs?

17 A Yes, there was a round table, and its base,
18 which was destroyed in the examination. The buffet was
19 destroyed in the examination, and the hutch was destroyed
20 in the examination.

21 Q And at the time that you inspected this
22 furniture, could you tell us again, what kind of inspec-
23 tion did you conduct?

24 A An intensive examination.

25 Q What did you do?

1
2 We found one other place, with cocaine on it. The
3 Drug Enforcement Administration performed their test,
4 which also proved positive. We then turned over the ent-
5 ire shipment, and signed a chain of customs custody, and
6 they took it, for controlled delivery.

7 Q Down to whom you signed that hutch over?

8 A I'm almost positive it was Drug Enforce-
9 ment Administration Agent Kennedy.

10 Q And at the time you signed the hutch over,
11 was it in this condition?

12 A No, it was intact.

13 Q Now, did there come a time, that you again
14 saw that piece of furniture?

15 A Yes, I received it back into customs custody
16 on March 16, at about 6 P.M., and I placed it in a cust-
17 oms security area, for safekeeping, overnight.

18 Q And how did you receive that?

19 A I signed a chain of custody back.

20 Q Did somebody give that piece of furniture
21 back to you?

22 A Yes.

23 Q Who was that?

24 A I'm not too sure. It might have been Thorn-
25 ton.

A 52

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A Right.

Q And finally, what about Government's No. 9?

A Two bags, it's the middle shelf, two bags.

Q Now, I notice, in each of these, Inspector,

there appears to be a bottle with some white powdery substance in it. Tell the jury what that is.

A That is a sample drawn for analysis.

MR. RUSSO: If your Honor, at this time, the government would ask that exhibits 9 through 11 be received in evidence?

THE COURT: Counsel?

MR. LOPEZ: Counsel will come over, to look at them. Your Honor, as far as Di Camillo is concerned, I have no objection, your Honor.

MR. LEWIS: No objection, your Honor.

THE COURT: All right, mark them in evidence.

THE CLERK: Government's Exhibits 9,10,11, and 12, received in evidence.

(Exhibits 9 through 12, received in evidence.)

Q Inspector, do you know approximately, how much cocaine was contained in that particular piece of furniture?

A We estimated it, at about five pounds.

MR. LOPEZ: Objection to estimates. I don't

1 find shoes.

2 Q These two containers that contained this furn-
3 iture on the day that you were there, they weren't the only
4 containers in the warehouse containing furniture, were they?

5 A I don't know if there was any other furniture.

6 Q Do you know-- do you recall that from March 16th?

7 A Not on that day, sir; not that I released, sir.

8 Q Do you recall of your own --

9 A Whether there was any other furniture?

10 Q Yes, sir.

11 A No, sir.

12 MR. LEWIS: I have no further questions.

13 MR. RUSSO: I have no further questions.

14 THE COURT: All right, you may step down.

15 MR. RUSSO: At this particular time, your Honor,
16 the Government would call Mr. James Mc Nulty.

17
18 J A M E S M C N U L T Y , having been duly sworn by the
19 clerk of the Court, was examined, and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. RUSSO:

22 Q Mr. Mc Nulty, by whom are you employed?

23 A Dahill Moving & Storage Company.

24 Q And how long have you been so employed?

Mc Nulty-direct/Russo

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Three years.

And what is your job with Dahill?

I am a driver, driving a truck.

Now, I ask you whether you were so employed
and on duty on March the 16th of this year?

Yes, sir, I was.

Could you tell the jury on March 16th what
your responsibility was?

I was supposed to go to the airport and pick
up some furniture.

And which airport was that?

Kennedy Airport, Pan Am cargo.

And prior to your going to Pan Am cargo at
J.F.K., did you have to make any other stop?

Yes, I had another stop in the airport picking
up some paintings. I don't remember what firm it was.

And did you have any papers to facilitate the
delivery of that shipment that you were going to pick up
at Pan Am with you that morning?

No, I didn't. I only had a bill of lading
from the moving company I worked for, and I was supposed to
pick up the papers in Queens at Pro Services.

Let me show you --

MR. RUSSO: Mark these please.

Mc Nulty-direct/Russo

Q What did you do after you arrived at Pan Am?

A I went over to the clerk to see about getting a shipment. The papers weren't there, and I would have to go back to Pro Services. He called a clerk and asked for a runner to come over with the air freight bill.

Q I show you Government's Exhibit No. 1 in evidence and ask you whether or not you can identify these particular documents?

A Yes, this is an air freight bill.

Q Are those the documents that were brought to you by a Pro Service runner?

A Yes.

THE COURT: Are you referring to Government's Exhibit 1?

MR. RUSSO: Yes, your Honor.

Q Now, do those papers that you have before you, Government's Exhibit No. 1, Mr. Mc Nulty, do they indicate who the consignee of that shipment is?

A Yes, it does.

Q And who is that?

A Lee Di Camillo, Dahill Moving & Storage.

Q Now I show you Government's Exhibit No. 14 for identification and ask you if you recognize this particular document?

A 56

A I didn't check the numbers on the containers but all over the containers the Dd Camillo -- Dahill Moving & Storage, so I figured those were the boxes.

U. S. Customs says to unload and take out the boxes and that is what I did.

I made an inventory of twenty-six pieces.

MR. RUSSO: Mark this please.

(Exhibit so marked, as of this date.)

And whose handwriting is that on the document?

And you filled that in yourself?

Under what circumstances did you fill that in?

A 57

1 did that?

2 A No, I don't know.

3 Q Now, did there come a time that all of the furn-
4 iture of this shipment was placed on your truck?

5 A Yes, there was.

6 Q And prior to your putting this shipment on to
7 your truck, was there any other furniture on the Dahill truck
8 that you were driving?

9 A No, there was not, there wasn't.

10 Q And following the shipment having been loaded on
11 the truck, did you leave the airport?

12 A Yes, I did.

13 Q Will you tell the jury who accompanied you to
14 the airport?

15 A The agents and --

16 Q "Who accompanied you to the airport," was my
17 question.

18 A I had a helper with me, Mel Young.

19 Q At the time you left the airport, was Mel
20 Young in the cab of the truck with you?

21 A No, he wasn't.

22 Q Who was with you, if anyone?

23 A Agent -- his name is Sharkey. Agent Sharkey.

24 Q Where was he sitting in the truck?

Mc Nulty-direct/Fusso

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A He was sitting in the cab right next to me. I was driving.

Q Was there anybody else in the cab or body of the truck?

A There was an agent there named Mike who was inside the body of the truck.

Q Do you know where Mel Young was at this time?

A Mel Young was in a car riding with one of the agents.

Q Now,--

MR. RUSSO: Mark this please.

THE CLERK: Piece of paper marked as Government's Exhibit 17 for identification.

(Exhibit so marked, as of this date.)

Q Mr. Mc Nulty, I show you Government's Exhibit No 17 and I ask you whether or not you recognize that document?

A Yes, I do.

Q Do you recall the first occasion you saw that particular piece of paper?

A March 15th, about 6:00 A.M., about 8:00 P.M., Mr. Peter Lapes gave me this address to deliver the furniture to.

Q What is the name on that piece of paper?

A 59

1 Mc Nulty-direct/Russo 02

2 A It says "Rodriguez on 1044 Place, Jamaica,
3 New York. "

4 Q Sir, do you know whose handwriting that is?

5 A That is Lee Di Camillo's handwriting because I
6 was right there watching him write it.

7 Q You saw him write it?

8 A Yes, I did.

9 Q At that time did you hear him say anything?

10 A I really don't remember.

11 Q That was the name and address to whom the goods
12 were to be delivered?

13 A Yes, that was.

14 MR. RUSSO: Your Honor, I would ask that this
15 be marked in evidence.

16 (Whereupon Mr. Russo showed the document to Counsel.)

17 MR. LOPEZ: Your Honor, may I just voir dire
18 him for a moment?

19 THE COURT: Yes.

20 MR. LOPEZ: Just for a moment.

21 MR. RUSSO: Sure.

22 VOIR DIRE EXAMINATION

23 BY MR. LOPEZ:

24 Q There are two pieces of paper here, correct?

25 A Yes, there is.

A 60

1 Mc Nulty-voir dire/Lewis

2 A Yes, I did.

3 Q And could you tell the jury what occurred
4 when you arrived at that location?

5 A Well, I drove up to the house and I got out
6 of the truck, and I opened the doors up, and I knocked on
7 the door, and somebody came to the door and I asked him,
8 "Rodriguez?" He says "Hold on, I'll have to check down-
9 stairs." He went downstairs and he came up, and somebody
10 else come up, and I said, "Rodriguez?" and he said to me,
11 -- he tried to say yes, and shook his head. "I have furn-
12 iture for you, I am Mayflower. Would you come over to the
13 truck and look it over? Is it your furniture?" He shook
14 his head the best he knew.

15 Q Did he shake it yes or no?

16 A Yes. And I brought one piece down into the
17 house and started to unload the truck.

18 MR. LOPEZ: Your Honor, at this time, I
19 would ask for a limiting instruction to the jury
20 with regard to the statements of this -- the purport-
21 ed statements of Mr. Rodriguez to the truckdriver --
22 the witness, as not binding on Mr. Di Camillo at
23 this time.

24 THE COURT: All right. Members of the Jury,
25 I will give you that limiting instruction. What it

A 61

MR. LEWIS: Objection, your Honor.

THE COURT: Sustained.

Q What happened at that particular time?

A I start to unload the truck and --

Q What did you unload?

A I unloaded the hutch top and agent Sharkey and me carried the furniture down to the basement.

Q Where was this other individual who came up from downstairs at that particular time?

A He was right behind us or he walked in front of us. He was downstairs already.

Q And what did you do when you got there?

A I, well I got downstairs, we tried to ask him where he wants the piece of furniture and he just pointed over to the kitchen wall. We unloaded, and I asked if he would sign my bill of lading.

Q Let me show you Government's Exhibit No. 15 for identification and ask you whether or not this individual signed in these two places?

A Yes, he did.

Q What was the name that was signed?

A It says "Carlos A. Rodriguez."

Q And let me show you Government's No 16 in evidence and ask you whether or not the same individual

Seguin-direct/Russo

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2 at all to do with the cargo warehouse?

3 A No.

4 Q And do you own a home, Mr. Seguin?

5 A Yes.

6 Q What is the address of your home?

7 A 90-1044 Place, Jamaica .

8 Q And how long have you been a landlord there?

9 A I have been there since 1963.

10 Q And what type of a home is that, is that a
11 one family?

12 A It is a two family house.

13 Q Two family?

14 A Yes.

15 Q And could you tell us who the tenants in the
16 house are?

17 A My brother lives upstairs and I live on the
18 first floor.

19 Q And do you from time to time rent out the
20 basement?

21 A Yes.

22 Q Do you know approximately when you started to
23 rent the basement out, sir?

24 A Well, we wrented only occasionally. We
25 usually -- by word of mouth somebody recommended us--

A 63

1 Seguin-direct/Russo

2 A The name that was given to us was Jarro.

3 Q J-A-R-R-O ?

4 A R. Marine.

5 Q Marine?

6 A Marine.

7 Q Did there come a time when Mr. Marine became

8 a tenant in your building?

9 A Yes.

10 Q Which apartment did he occupy?

11 A He had the basement.

12 Q The basement apartment?

13 A The basement is finished.

14 Q And do you know approximately when he began

15 to live there?

16 A About three months -- he was living there

17 about -- I'd have to look at this here. I don't recall.

18 Q You can look at the rent receipts if that

19 refreshes your recollection, Mr. Seguin.

20 A Yes, sir. December 1976.

21 Q That would be last December?

22 A Yes.

23 Q Does that book indicate to you that you have

24 a rent receipt for rent paid by Jarro in December?

25 A Yes, December 23rd.

1 Seguin-direct/Russo

2 from my job.

3 Q Was it a Pan Am truck?

4 A No, it was a Mayflower truck.

5 Q Mayflower?

6 A Mayflower.

7 Q What happened at that particular time, if you
8 can tell us?

9 A So I came out of the door.

10 Q Yes?

11 A And the driver -- it wasn't the driver, the
12 other guy was approaching the house with a paper in his hand
13 and then he asked me if there is an Alberto Rodriguez liv-
14 ing at that address?

15 Q Did he ask you "Alberto" or just "Rodriguez"?

16 A He said, "Alberto Rodriguez."

17 Q What did you do at that particular time?

18 A I said nobody with that name lived at that
19 address. He then showed me a piece of paper and the piece
20 of paper had my address on it.

21 Q Let me show you Government's Exhibit No. 17
22 in evidence and ask you whether this is the paper?

23 A Yes, that is the paper.

24 Q Do you know whether that is the paper?

25 A Yes, that is the paper--my address on there.

Seguin-direct/Russo

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2 Q I notice that the name there is Rodriguez?

3 A Right.

4 Q And the address is 90- 1144 Place, Jamaica;

5 is that your house?

6 A Yes, that is my house.

7 Q So what did you do after that?

8 A I -- after he showed me that piece of paper,
9 I told him to wait, let me make sure, I have a tenant down-
10 stairs, and then I went in the house and I knocked at the
11 door and through the door I asked Jarro -- I asked him,
12 "There is some furniture from Columbia to Alberto Rodriguez,
13 and is that you?" , and he said, "Yes, I am expecting it."

14 Q Did he say that in -- you spoke to him
15 through the door in English or Spanish?

16 A Spanish, of course.

17 Q He responded in Spanish ?

18 A Yes.

19 Q What happened at that particular time.

20 A Then he come up the steps and we both walk
21 out the door, and then I asked him if his name is Rodriguez.

22 Q What did he say to that?

23 A He said, "Yes, I am Carlos Alberto Rodriguez."

24 Q Did he say , "I am Carlos Alberto Rodriguez,"
25 are you certain of that?

A 66

Seguin-direct/Russo

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2 was a little large to turn, so they have first to go into
3 my apartment a little bit and then come down the steps. I
4 was holding the door all the time. They went downstairs.
5 Then about two or three minutes later they come up again
6 and they were three people now, Jarro and two guys, deliver-
7 ing.

8 Q Delivery men?

9 A Yes.

10 Q What happened when they came back up?

11 A They went down to the van and they were look--
12 ing at the inside of the van and I see the three guys -- the
13 three of them looking in the van.

14 Q Did you observe Mr. Llano doing anything at
15 that particular time?

16 A He was just nodding his head.

17 Q Yes or no?

18 A Affirmative, yes.

19 Q Affirmative?

20 A Yes.

21 Q What happened at that particular time if you
22 recall, Mr. Seguin?

23 A They came back through the house and just
24 before they reached the stoop of the house, they handcuffed
25 him.

A 67

Sharkey/direct/Russo

A 5

A The interdiction of narcotics system
John R. Kennedy Airport.

Q What were you, on duty on March

A I was.

Q And on that date, did you have
arrive at Pan American Cargo, sir?

A I did.

Q Approximately what time of the day was

A It was approximately 1:30 to 1:40 P.M.

Q And can you tell us what you observed
your arrival there?

A Yes. Upon our arrival at the Pan American
Cargo we immediately proceeded to Customs Inspector
Harold Badaracco?

A And we observed a shipment of furniture
that Inspector Badaracco just inspected, and he re-
lated to us that he found.

MR. LOPEZ: Objection as to conversation.

THE COURT: Sustained.

Q Now, you say a shipment of furniture, sir,
consisted -- What did that shipment consist of if you
tell us?

A It consisted of 26 individual pieces of
furniture to include tables, chairs and a breakfront or

A 68

EASTERN DISTRICT COURT REPORTERS

UNITED STATES DISTRICT COURT
225 CADMAN PLAZA EAST
BROOKLYN, NEW YORK 11201

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it speaks for itself.

MR. RUSSO: Thank you, your Honor.

Q Now, you have indicated that there was a Dahill Moving Truck, I believe. Was there anyone there to pick up the furniture?

A Yes. There was.

Q And how many individuals were there?

A There were two.

Q And do you know the name of either of those individuals?

A I know the name of one of the individuals.

Q And what is his name?

A He was the truck driver by the name of James McNulty.

Q And did you have any conversation with Mr. McNulty?

A Yes, I did.

Q Could you tell the jury what you said to Mr. McNulty?

MR. LOPEZ: Objection, your Honor. Calls for hearsay as far as McNulty is concerned.

MR. RUSSO: I'll withdraw the question.

Q I show you Government's Exhibit No. 1 in evidence and ask you whether or not you recognize that

A 69

EASTERN DISTRICT COURT REPORTERS

UNITED STATES DISTRICT COURT

225 CADMAN PLAZA EAST

BROOKLYN, NEW YORK 11201

852-7101

piece of paper?

A I do.

Q And when was the first time you saw that piece of papers, sir?

A On March the 16th at the Pan Am Cargo Terminal.

Q And what were the circumstances?

A The circumstances were as follows: This was the piece of paper that Mr. McNulty gave to me in answer to my question as to wheether the shipment he was taking -- He was taking the shipment.

Q Now, did there come a time that the shipment was loaded on board that truck?

A Yes, there did.

Q Can you tell us what circumstances caused the furniture to be loaded up on the truck?

A Yes. Myself and my co-agents at the Pan American Cargo Terminal made a determination to initiate what we call a controlled delivery.

Q Could you tell us what a controlled delivery is, sir?

A Controlled delivery is to once a seizure is made of contraband, to effect its delivery to its ultimate consignee without appearing or looking like any alterations were made.

A 70

EASTERN DISTRICT COURT REPORTERS

UNITED STATES DISTRICT COURT

225 CADMAN PLAZA EAST

BROOKLYN, NEW YORK 11201

Q And following the shipment being loaded on the truck what if anything did you do, sir?

A I proceeded the driver into his truck, into the cab of his truck.

Q And did you effect any change of clothing, sir?

A Yes, I did. I put on what they call, like seaman's work cap, also a thing, dark blue, outer work type of clothing, took off my suit jacket, my tie.

Q And let me ask you who loaded the truck with this shipment, sir?

A Myself and the driver, Mr. McNulty.

Q And I show you Government's Exhibit No. 3 in evidence and ask if you recognize the piece of furniture that is portrayed in that photo?

A Yes, I do.

Q And could you tell us what that piece of furniture is?

A That piece of furniture in the picture is the hutch which contained the white powdery substance.

Q And was this piece of furniture placed on the truck, sir?

A Yes, it was.

Q By whom?

A 71

EASTERN DISTRICT COURT REPORTERS

UNITED STATES DISTRICT COURT

225 CADMAN PLAZA EAST

BROOKLYN, NEW YORK 11201

812-7105

1
2 A By myself and the drive, McNulty.

3 Q And where was that piece placed on the truck in
4 terms of the other furniture, if you recall?

5 A Well, in terms of the truck itself, it was
6 towards the rear of the truck but in plain view in front
7 of the rest of the furniture.

8 Q Was it by a door or -- Do you recall?

9 A It was adjacent to the middle loading door
10 of the truck.

11 A What happened at this point, sir?

12 A We proceeded to the address indicated on
13 this card.

14 Q And did there come a time that you arrived
15 there?

16 A Yes, I did.

17 Q Could you tell us who was in the truck, sir?
18 During the trip to the airport?

19 A Yes, sir.

20 Q To that address?

21 A McNulty was driving the truck. I
22 was adjacent to him in the cab and my co-agent Mike
23 Priore was in the cargo area of the truck.

24 Q In the van?

25 A In the van.

2 of those words, sir?

3 A My understanding --

4 MR. LOPEZ: Objection, your Honor, as to
5 what his understanding is. I would imagine it would
6 be somebody's else's understanding of those words.

7 MR. RUSSO: Well --

8 THE COURT: Well, I think the Agent has
9 testified that he speaks limited Spanish, and I think
10 that the jury would be entitled to have his trans-
11 lation of what it was he said in Spanish. So, you
12 may answer the question. I overrule the objection.

13 A My interruption of that in English is, " Is
14 this your furniture, Mr.?"

15 A Now, I ask you, Agent Sharkey, whether you said
16 those words to Mr. Liano at the time that you were by the
17 truck with the doors open and pointing?

18 A I did.

19 Q And what if anything did Mr. Liano do?

20 A He did two things. He orally indicated it
21 was, by saying the word, "Si", and he also shook his head
22 in this manner (indicating) to indicate yes.

23 Q Now, following that brief conversation in,
24 as you put it, your pidgeon Spanish, what if anything took
25 place?

A 73

A Following that , myself and the driver proceeded to pick up, initiate picking the furniture out of the truck and bring it into the apartment.

Q And what if anything did you observe Mr. Liano do?

A Mr. Liano proceeded us, through the front steps, into his apartment.

Q By the way, Agent Sharkey, let me just ask you this, whether you had on any previous occasions an occasion or a need to use that type of broken Spanish that you speak in connection with your job?

A On several occasions I have.

(CONTINUED ON NEXT PAGE)

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2 of lading and the other is the household goods receipt.
3 They're receipts for carrying merchandise.

4 Q And when was the first time you saw those
5 documents, if you recall?

6 A The bill of lading as best of my knowledge,
7 I recall seeing in the truck while going to the address.

8 Q And how did you come into contact with that
9 particular piece of paper?

10 A Well, the driver showed it to me.

11 Q That would be Mr. McNulty?

12 A Mr. McNulty.

13 Q And did you retain the piece of paper that he
14 showed us -- showed you in the truck?

15 A As I recall, I did, sir.

16 Q And that was just a bill of lading?

17 A That was the bill of lading, yes, sir.

18 Q What is the other document?

19 A I didn't see that document, sir, until
20 thereafter.

21 Q Now, what happened after you put the hutch
22 down in the basement apartment, sir?

23 A Once we put the hutch down in the apartment,
24 I handed this bill of lading to Mr. Llano, in Mr. McNulty's
25 presence.

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Q And at that time did you know that Mr. Liano's name was Victor Raul Agudelo-Liano?

A No, sir.

Q What was -- Withdrawn.

What happened after you handed that to Mr. Liano?

A After I handed it to Mr. Liano, he initialed it and he also signed it twice.

Q You say he initialed it?

A Yes, sir.

Q Where are those initials?

A The initials are in the upper right.

Q We're talking about Government's Exhibit 15?

A Yes.

Q And who are those initials, sir?

A As best as I can make out, it's three letters, C A R, and right below that it is B R or BA.

Q And did you observe Mr. Liano's sign that piece of paper?

A Yes, sir, I did.

Q And can you tell the jury the signature --- what the signature says?

A Yes, sir. It says, "Carlos A. Rodriguez".

Q Now, I show you Government's Exhibit No. 16

There was Agent John Cipriano and he was in his car. To the best of my knowledge, he was up the corner. There was Agent Bill Kennedy in his car. There was Agent Mark Thornton and Agent Mark Donohue at strategic locations were a visual oversee of the building in question.

Q Now, can you tell us what their function was?

A Their function was one of surveillance of the truck prior it being, prior to its arrival at the address, and also to back myself up.

Q What do you mean "back you up"?

A In case there was any type of difficulties.

Q What happened following your prearranged signal?

A Immediately following the removal of my cap, I noted the agents I just mentioned exit their various vehicles and rapidly proceed to my location.

Q And what happened then?

A Once I see that, I immediately turned around and went back towards the apartment.

Q And what occurred after that or at that point?

A At that point, I immediately effected the arrest of Mr. Cipriano.

Q And can you tell the jury if you recall where

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2 A I was in the passenger side. Agent Cipriano
3 was the driver and Mr. Liano was in the back seat.

4 Q Was Mr. Liano in handcuffs?

5 A Yes, he was.

6 Q And did there come a time that you arrived
7 at your district office at Kennedy Airport?

8 A Yes, sir.

9 Q And did there come a time that you met an
10 individual by the name of Lee Di Camillo?

11 A Yes, there did.

12 Q And where was that sir?

13 A Where did I meet Lee Di Camillo?

14 A Yes, sir.

15 Q In our office.

16 Q Approximately what time?

17 A To the best of my knowledge, ti was between
18 7:30 and 8:00 P.M. that evening.

19 Q That would have been on March the 16th?

20 A On the 16th.

21 Q And do you see the individual Lee Di Camillo
22 in this courtroom today, sir?

23 A Yes, I do.

24 Q And could you indicate who that is to the
25 jury?

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2 A Yes, sir. He's the man sitting at the right
3 table, the extreme left with the red tie.

4 MR. LOPEZ: Indicating Di Camillo, your Honor.

5 MR. RUSSO: Fine, that you, sir.

6 Q And on that occasion, did you have a conver-
7 sation with Mr. Di Camillo?

8 A I did.

9 Q And who was present at that time?

10 A I was present, Agent John Cipriano was pres-
11 ent, Agent William Kennedy was present, and in and out
12 there was also Agent Mike Priore for very brief periods.

13 Q Could you tell us the substance of that
14 conversation, sir?

15 A Yes. In some instance subsequent --

16 Q Well, I don't want you to give the substance
17 of the conversation. Let me ask you, did you conduct an
18 interview?

19 A I did.

20 Q And what did that interview -- when did that
21 interview commence, sir?

22 A Shortly after 8:00 P.M. as I recall.

23 Q And what time was that interview terminated,
24 if you recall?

25 A My personal interview?

Q Yes, sir.

A I would say between 9:30 and 10:00 P.M.

Q And during the course of that interview, who was present, sir?

A Agent John Cipriano and Agent William Kennedy.

Q And can you tell us what, if anything, you said and what, if anything, Mr. Di Camillo said during the course of that interview?

A Yes. Immediately upon initiation of the interview, we identified ourselves, he identified himself, he had told us his employer, what he did for a living, etc.

Q Who was his employer?

A His employer was the Dahill Moving and Storage.

Q And do you recall what his occupation was that he stated?

A He stated he was a salesman for that corporation.

Q Proceed.

A Immediately upon identification procedures and the point of his occupation, we had asked him what he knew of the shipment in question. He told us that he knew of it. That he went down to Bogota to initiate it, at which point, once he said he went down to Bogota, as I recall, he said it was in approximately mid to late February, '77. Immediately upon him stating that myself

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2 conversations, let's have the full conversation as he re-
3 calls it.

4 MR. RUSSO: Fine.

5 Q Would you tell us what rights Mr. Di Camillo
6 received?

7 A Yes, sir. Again, as I stated, the Agent
8 Cipriano read them but as I recall he was advised that he
9 was a suspect in the smuggling of narcotics, that he had the
10 right to remain silent, that everything he said would be
11 held against him in a court of law, that he had a right to
12 an attorney, that if he couldn't afford an attorney, an
13 attorney would be furnished to him at no cost to him
14 by the United States Government, that he had a right to the
15 attorney being present at any and all interviewing, that
16 he had the right to terminate the interview at any time he
17 wished, that he also had the right to answer questions, answer
18 some questions and not all, answer all questions and/ or
19 answer no questions, he was also advised if he understood
20 those rights perfectly, he was then advised if he wished
21 to waive those rights and continue with the interview.

22 Q Now, what point was he asked whether or not he
23 understood these rights, Agent?

24 A As I recall after each one was read.

25 Q And following that question, what if anything

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1
2 did Mr. Di Camillo say?

3 A He had wished to be interviewed, he wished to
4 answer our questions.

5 Q And he said that after each --

6 A Yes, sir.

7 Q Advisement of rights were read to him?

8 A Yes, sir.

9 Q Could you continue with the conversation?

10 A After -- Again, after that, we had asked him
11 what he knew of the shipment again. He had told us that he
12 was down to Bogota, that he initiated the shipment. He had
13 mentioned some other individuals. And that he was to re-
14 ceive \$8,000 once the shipment was terminated or reached its
15 final destination.

16 Q Now, did he make any statements with respect
17 to the shipment itself or its contents, sir?

18 A Yes, sir, he did.

19 Q Could you tell the jury what statements, if
20 any, were made?

21 A He told us that it was his knowledge that the
22 shipment contained stuff.

23 Q Could you tell us how that came about in the
24 conversation, if you recall?

25 A As I recall, we had asked him again about the

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shipment if there was anything suspicious about the shipment, that he knew of. He replied in the affirmative. He replied that it contained stuff. We had asked him what he had meant by stuff, and he said it was his knowledge and his belief that by stuff, he meant narcotics.

Q Was he asked specifically Agent, whether or not the shipment in question could have contained narcotics?

A Objection, your Honor as to leading.

THE COURT: Sustained.

Q What other statements if you recall did Mr. Di Camillo make, sir?

A He also made a statement to the effect that when he was in Bogota arranging and initiating this shipment of furniture, that a gentleman asked him to bring up a suitcase containing stuff into the U.S.

(CONTINUED ON NEXT PAGE)

A He stated he would refuse to do that because he was, in his words "too scared to bring anything aboard containing stuff through customs."

Q Did he indicate -- Withdrawn.

What was Mr. De Camillo's demeanor during the interview, sir?

A His demeanor as far as I was concerned was, he was extremely talkative, hyper and nervous.

Q Did he make any statement with respect to --
MR. LOPEZ: Objection as to leading, your Honor.

THE COURT: All right.

Q What other statements, Agent, if you recall?

A I also recall him making a statement that he was to receive as I said before, approximately \$8,000 for the -- from one of the individuals that he had mentioned as part of the operation.

At that point, he was formally arrested by Agent John Cipriano.

Q Approximately how long after he was advised of his rights was the arrest effected, sir, if you recall?

A Best of my knowledge, it was between 8, 10, 12 minutes after the rights.

Q Do you recall any other statements, sir,

Q What do you mean by first name?

A Tom. He kept calling me Tom.

Q And what did you do after that statement?

A I told him it was futile to continue the conversation in the interview with him because he was being evasive.

Q And what happened then?

A He kept pleading and then he asked for a personal private interview with Agent Cipriano.

Q What do you mean when you say "personal and private", what do you mean by that?

A He had asked me by first name if I wouldn't mind that with no slight intended if he could please speak to John in private.

Q What happened at that point, sir.

A I left and Mr. Di Camillo and Mr. Cipriano had a very short conversation together in the office and immediately they both left the office and walked up and down the hallway adjacent to our office by themselves.

Q And approximately how long, about how long did that conversation last?

A As best as I recall, it went on for at least an hour and a half.

Q And you weren't privy to any of that conversation,

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is that right?

A No, sir.

Q What happened next, sir?

A As I recall, Agent Cipriano terminated the interview and his walk with Mr. Di Camillo up and down the hallway and proceeded back into the office, at which time I joined the both of them.

Q And can you tell us what happened?

A Yes, at approximately this time or a few minutes before our special agent in charge, our direct supervisor, came to our office.

Q And then what happened?

A Mr. Di Camillo requested a personal private interview with the special agent in charge.

Again by stating there was no slight intended for either me, Mr. Kennedy or Mr. Cipriano, but he would feel much freer, much more relaxed if he could see the head supervisor in private.

Q Would you tell the jury what happened after that?

A Yes. We brought him into the supervisor's private office, my direct supervisor, Mr. Michael J. Tobin, and I introduced him to Mr. Di Camillo and Agent Cipriano left. Mr. Tobin had a private interview with Mr. Di Camillo.

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2 Q When you met Mr. Di Camillo on March 16,
3 1977, at J.F.K., was this the first time you met with him,
4 is that correct?

5 A Yes, sir.

6 Q And is it your testimony, is it not, that
7 when you questioned Mr. Di Camillo, you told him that he
8 didn't have to say anything, is that correct?

9 A That's part of his rights.

10 Q I understand.

11 A Yes, sir.

12 Q And Mr. Di Camillo insisted on speaking you
13 you to other agents and to Mr. Cipriano alone, and to
14 Michael Tobin, is that correct?

15 A That is correct.

16 Q He insisted, and he had already been fore-
17 warned with respect to his rights, isn't that correct?

18 A Yes, sir.

19 Q Now, was Mr. Di Camillo known prior to March
20 16th to the Department of Drug Enforcement Administration?

21 A No, sir.

22 Q He was an unknown person, isn't that correct?

23 A Yes, sir.

24 Q Now, you did not know that he had been in
25 Columbia in February of 1977, is that correct?

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A Prior.

Q You did not know prior to March 16th?

A No, sir.

Q And you learned of the fact that he had been in Columbia through Mr. Di Camillo, isn't that correct?

A Yes, sir.

Q He volunteered that information?

A Yes, sir.

Q Your testimony is, you didn't force this information out of him?

A No, sir.

Q You didn't intimidate him?

A No, sir.

Q You didn't assault him?

A No, sir.

Q He voluntarily gave you this information, is that your testimony?

A Yes, sir.

Q As a matter of fact, didn't you even see an air passage ticket that Mr. Di Camillo showed you where he had been in -- to Columbia and turned it over to the Department of Drug Enforcement Administration?

A Yes, sir.

Q And you have that still in your possession?

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time to make rulings which may be necessary.

MR. RUSSO: Or might not be.

MR. LOPEZ: Or might not be. The prosecutor has fulfilled his duty in advising us what he will do, why don't we proceed.

THE COURT: That's the best way.

(In open Court, in front of the jury)

BY MR. LOPEZ:

Q Now, during the course of your conversations with Mr. Di Camillo, you initially wanted to find out who the people were in Columbia, were you not interested?

A Correct.

Q And Di Camillo told you that he had been in Columbia to arrange for this shipment, isn't that correct?

A That is correct.

Q Well, did he tell you who he saw in Columbia? The names of the people?

A Yes.

Q And what were the names of the people that Mr. Di Camillo told you he saw in Columbia?

A He had mentioned the name Hondo Galliano.

Q Anybody else?

A In Columbia?

Q Yes, I'm talking about Columbia.

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2 A He had mentioned the name Gomez.

3 Q Did he give you a first name?

4 A No.

5 Q Did he mention anybody else?

6 A In Columbia?

7 Q Yes.

8 A He mentioned a Mr. Victor Agudelo-Llano.

9 MR. LEWIS: Objection, your Honor.

10 THE COURT: Well --

11 Q In Columbia?

12 A I'm pretty certain it was the Columbia --

13 MR. LEWIS: Your Honor, could we have a side
14 bar now?

15 THE COURT: Yes. Just a moment.

16 (Side bar as follows)

17 MR. LEWIS: Now, your Honor, I'm going to
18 move for a mistrial. This witness was asked with
19 regard to Columbia, the names that were mentioned
20 to him were people he met in Columbia. Even in the
21 investigative report with reference to the Govern-
22 ment's report of Mr. Kennedy there is no mention of
23 Mr. Di Camillo's meeting with Mr. Llano in
24 Columbia.

25 THE COURT: Well, you're going to have an

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2 opportunity to cross examine him. You can bring
3 that out on cross examination. After all, this is
4 only an agent who by his own--Well, he took many
5 statements from the defendant, also said he'd turn
6 them over to some other agent that was in and out.

7 I'm going to deny your motion for a mistrial
8 and suggest if you want, you can pursue it.

9 (In open court in front of the jury)

10 BY MR. LOPEZ:

11 Q Let me just see if I understand you correctly.

12 It is your testimony then that Mr. Di Camillo,
13 during the course of his conversations on March 16th, even-
14 ing, nighttime at J.F.K. mentioned the name of Hondo
15 Galeano, Gomez, and Victor Agudelo-Liano. Anybody
16 else?

17 A He also mentioned the name of Mario Galeano.

18 Q Okay. Now, when was the last time prior to
19 the proceedings in Court that you had an opportunity to
20 see Government's Exhibit 20?

21 A This morning.

22 Q And did you review it again this morning?

23 A Quickly, yes, sir.

24 Q And prior to this morning, when was the time
25 previous to this that he had -- that you had an opportunity

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to review?

A I think it was last Wednesday, sir.

Q Last Wednesday, fine. Would you kindly look at Exhibit 20, please. I think it is Subsection 5, with respect to statements during the interview of Di Camillo. Would you look at it?

Do you have it before you?

A Uh huh. Yes, sir.

Q Now, is there anywhere in that where you say that --that Mr. Di Camillo was to receive \$8,000 for his participation in arranging this shipment?

A Could you repeat the exact question again, sir?

Q Yes. Is there anywhere in that statement where it is indicated that Mr. Di Camillo was to receive \$8,000 for his participation in arranging the shipments?

In arranging the shipment of March 16th?

A No, sir.

Q Is there anywhere in there where it says, attributable to Mr. Di Camillo, "It's tough to admit when you're wrong"?

A No, sir.

Q Is there anywhere in that statement where it

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1
2 says that Di Camillo knew that the shipment contained
3 narcotics?

4 A Yes, sir.

5 Q Read it to us.

6 A "Arranged for the transportation of the
7 shipment so that he, Di Camillo, knew that there was some
8 stuff."

9 MR. LEWIS: Objection, your Honor. Can we
10 find out where it was?

11 A I'm sorry, No. 5, Line 1,2,3,4,5,.

12 Q Go ahead reading from 2, isn't that correct?

13 MR. RUSSO: Your Honor, I'm going to ask
14 my witness not be directed by both counsel.

15 MR. LEWIS: Your Honor, can we just approach
16 the bench for a minute.

17 THE COURT: Just a moment. Let's confer with
18 the problem. See if we can solve it.

19 (Side bar as follows:)

20 MR. LEWIS: He says 1,2,3,4,5. Now, there
21 was some stuff that's okay, but I don't want him to
22 keep going on here where he gets to -- withdrawn.

23 MR. LOPEZ: I'm not going to ask him that,
24 just 2 and 3.

25 MR. LEWIS: All right.

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BY MR. LOPEZ:

Q Agent, sorry for the interruptions. Would you read us the part for the statement that tells us that there were narcotics in that shipment?

A Well, the statement reads as follows, that he, Di Camillo knew that there was some stuff concealed in the furniture and that the stuff could be narcotics.

Q Okay. Now, is there anywhere in that statement that indicates that he did not want to take the suitcase because he was too scared to bring it through customs?

A I think.

Q Read it to us.

A "That Hondo Galeano wanted Di Camillo to bring a suitcase across for us from Bogota. Di Camillo did not think that the suitcase might contain some stuff."

Q The part about too scared to bring it through customs, is not there is it?

A No, sir.

Q And at all times that you conducted your interrogation and your interview someone was always present with you, is that correct?

A Yes, sir.

Q You never interviewed Di Camillo alone, did

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right?

A To my knowledge, he does not.

MR. LEWIS: No further questions.

MR. RUSSO: No further questions, your Honor.

THE COURT: All right. Agent Sharkey you may step down. Thank you, sir.

Anymore questions?

MR. RUSSO: Yes, your Honor. At this time the Government calls Agent Michael Priore.

M I C H A E L P R I O R E, having first been duly sworn by the Clerk of the Court was examined and testified as follows:

THE CLERK: What is your name?

THE WITNESS: Micheal Priore.

DIRECT EXAMINATION

BY MR. RUSSO:

Q Would you state your full name for the record, please?

A Michael Priore.

Q And by whom are you employed?

A The Department of Justice, Department of Drug Enforcement Administration.

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A Physically search it, no, sir.

Q Did you open any drawers?

A No, sir.

Q Do you know if any agents did?

A Not to my knowl

Q Did there come a , sir, that you left
that apartment?

A Yes, sir.

Q And what did you do upon leaving the apartment?

A In the course of the immediate processing,
while still at that apartment, it was determined that in-
formation from the Dahill Mayflower Company could be most
helpful in the investigation and another agent and myself
were detailed to go into Brooklyn to Dahill Mayflower to
secure whatever paperwork was available for the shipment
and to interview the sales representative who was indicated
as the consignee for Dahill Mayflower.

Q Let me show you Government's Exhibit No. 1
in evidence, Agent, and ask if you recognize those doc-
uments?

A Yes, sir I do.

Q And could you tell us what those are, please?

Q The first document is an airway bill, of
Avianca Airlines which indicates a shipment, Trans Pack, Ltd.,

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A Brooklyn, New York

Q And did you say that an airway bill indicated the address?

A Yes, it does.

Q And what is that?

A 602 Coney Island Avenue in Brooklyn, New York.

Q And do you recall if that was the address that you went to, sir?

A Yes, sir, I do.

Q And what occurred when you arrived?

A I first met with an individual who was later identified as a vice president, I believe, of the Dahill Moving and Storage Company, who anticipated our arrival, and asked to see Mr. Di Camillo, who had been, who through this individual had first met at Dahill, was advised to wait for agents from drug enforcement for the purpose of an interview based on a particular shipment, that they'd acted as a salesman for.

Q And at the time that you arrived at Dahill Mayflower, sir, was Mr. Di Camillo a suspect in this case?

A No, he was not.

Q Do you know the individual, the name of the individual who you saw upon your arrival?

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2 A He had informed me that he was in fact the
3 salesman for this particular shipment, that he was acting
4 in the normal course of business or his normal course of
5 business and arranged for a particular shipment, and he
6 was in the process of setting up an account with these
7 particular individuals for an unspecified volume of furn-
8 iture to be shipped from Bogota, through the Dahill May-
9 flower warehouse in New York to other ultimate consignees
10 in the New York area.

11 Q Agent, at that point in time, had you shown
12 any -- him any papers?

13 MR. LOPEZ: I object. I don't think the
14 Agent was finished giving us the best of his
15 conversation.

16 MR. RUSSO: I'm sorry. I thought he did.

17 MR. LOPEZ: I'm sorry. Was there anything
18 else? He was in the process of showing you some
19 papers.

20 THE WITNESS: I didn't say he was in the
21 process of showing me some papers, but at that
22 particular time, Mr. Di Camillo further volunteered
23 the information that in furtherance of his account
24 he had taken a trip to Bogota and at the time went
25 into his attache case which was on the desk and

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o offered an airline ticket or a ticket receipted copy and a photograph.

Q And did you demand that information, sir?

A No, sir, I did not. It was volunteered by Mr. Di Camillo.

Q Now, I show you Government's No. 21 for identification and ask if you recognize that piece of paper?

(Handing to witness)

A Yes, I do.

Q What is that, sir?

A This is the receipt or identical copy of the airline ticket that I just referred to.

Q And did you see either the ticket or did Mr. Di Camillo state to you where he had traveled in furtherance of this shipment?

A Yes, both the ticket indicates travel from New York to Bogota and further travel, and Mr. Di Camillo stated that he had traveled to Bogota to further this account.

MR. RUSSO: Your Honor, I ask that this be marked in evidence.

MR. RUSSO: No objection.

THE CLERK: Government's Exhibit 21 received

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Q Well, what about any other statements that he might have made?

A There are two occasions that I recall quite vividly as far as making statements in general by Mr. Di Camillo. The interview lasted a bit longer, quite a bit longer. They were -- Then a normal amount of time that would be spent with a defendant based on a given situation, this situation in particular, and on two separate occasions I heard Mr. Di Camillo request additional conversations with two specific agents. This stayed up most in my mind because at this particular time it had been a very long day. The processing of both the narcotics and non-narcotics evidence had been completed and the end of the day was based on the conclusion of the debriefing of Mr. Di Camillo and most of us wanted to go home to be very honest with you.

Q And what statements did Mr. Di Camillo make, sir?

A A statement to the effect that he wanted to talk to a particular agent alone. That he had wanted to tell him something. This was at a given time when the decision had been reached by the senior agents and the case agent, that the debriefing should be concluded, the defendant should be transported and the office should be

A To investigate violations of the federal narcotics laws.

Q And how long have you been so employed?

A Since September of 1973.

Q Now, did you have occasion to be on duty on March 16th of this year, sir?

A Yes, I did.

Q And on that date did you have occasion to be at Pan American cargo area at John F. Kennedy Airport?

A Yes, I did.

Q And approximately what time of the day or night would you have arrived there, sir?

A I arrived there between 3:30 and 4.

Q And what did you observe at the time of your arrival?

A At that time Special Agents Sharkey, Priore and Kennedy were at the Pan Am cargo building with two drivers from Mayflower and they had some furniture in which they had, customs had discovered some cocaine secreted in the furniture.

Q And did you see the furniture?

A Yes, sir.

Q And where was that furniture, if you recall?

A I believe it was already on the truck when I

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got there.

Q And do you know what kind of a truck that was?

A That was a Mayflower moving truck.

Q Now what if anything did you do, sir, at that point in time?

A We made arrangements to deliver the furniture to the consignee.

Q And do you know who the consignee of that particular shipment was?

A I believe it was someone named Rodriguez.

MR. LEWIS: Objection, your Honor. The record indicate the consignee was either Dahill Moving or Lee Di Camillo.

MR. LOPEZ: Well, your Honor, I object now to counsel's statement. He can take the stand.

THE COURT: All right. The jury will disregard counsel's statements.

Q Well, let me ask you this question: Do you know where the goods were going to be delivered?

A Yes, they were to be delivered to an individual named Rodriguez in Queens.

Q And was that at 90-14 144th Place in Jamaica?

A Yes, sir, I believe it was.

Q And did you go to that address, sir?

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812-7101

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A Yes, I did.

Q And would you tell the jury how you went there?

A I traveled there in my own vehicle, behind the Mayflower moving van.

Q And do you know who was in the moving van, sir?

A Yeah.

Q Who?

A Yes. Special Agent Sharkey and Special Agent Priore and a Mayflower employee.

Q Do you know where they were in the van or what their various functions were, sir?

(CONTINUED ON NEXT PAGE)

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that vantage point?

A I observed Agent Sharkey making -- I did not observe him actually making the delivery.

Q Just tell us what you observed?

A I observed him when he came out of the house he gave us a signal indicating --

Q What do you mean, what kind of a signal.

A I believe at that time he was removing his hat.

Q And what did that signify to you?

A That the shipment was delivered and that an arrest was going to be made.

Q Did you see it? Did you see anything being brought into the house, sir?

A I believe I saw them going to the truck to take the furniture out, but I don't recall seeing them actually going up the steps with the furniture.

Q And did you see -- Withdrawn.

Now, at that point, that you saw this pre-arranged signal, what if anything did you do, sir?

A I proceeded to the house.

Q How did you go to the house, walking?

A Walking, by foot.

Q Pardon me?

A 104

1
2 away.

3 A Yes, sir.

4 Q Now, did there come a time that you left that
5 particular address, sir?

6 A Yes, sir.

7 Q And where did you go?

8 A We returned to our office at Kennedy Airport.

9 Q And how did you travel back there?

10 A In a Government vehicle.

11 Q And who traveled with you?

12 A Agent Sharkey and the defendant, Victor
13 Agudelo.

14 Q And then you arrived at your district office
15 at J.F.K. Airport?

16 A Yes, sir.

17 Q And can you tell the jury what if anything
18 you did upon your arrival at the airport.

19 Q At the airport we began to prepare him for
20 the processing of the prisoner.

21 Q Of Mr. Llano?

22 A Yes, sir.

23 Q And did there come a time while you were at
24 the airport on the evening of the 16th that you met an
25 individual by the name of Lee Ci Camillo?

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SEE TIME

A Yes, sir.

Q And approximately what time was that?

A That would be between 7:30 and 8.

Q And do you see the individual Lee Di Camillo
in the Court today?

A Yes, sir.

Q And could you point him out to the jury,
please?

A The gentleman with the orange tie.

MR. RUSSO: Indicating the defendant Di
Camillo.

Q What were the circumstances of your meeting
with Mr. Di Camillo?

A Mr. Di Camillo had been taken to our office
by two other agents. The two agents were originally sent
to Mayflower to interview.

MR. LOPEZ: Objection, your Honor.

THE COURT: I don't think this is of this
agent's own knowledge.

Q Well, did you direct anyone to go to Dahill
Mayflower?

A Yes, sir.

Q And who did you direct to do that?

A Special Agent Mike Priore and I believe

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Special Agent John Donahue.

Q Tell us what the circumstances were of your meeting with Mr. Di Camillo at the airport, sir?

A Mr. Di Camillo was taken to our office and I interviewed him in one of our offices.

At the time I interviewed him, I asked him what he had said to the agents that were going to interview him and he advised me that he had told them he had been to Bogota, Columbia.

Q And you didn't know that before Mr. Di Camillo told you that?

A No, sir.

Q What if anything other -- What other conversations did you have with him?

A Mr. Di Camillo told me he'd been to Bogota. That's what he told the agent and he had given them his ticket which he flew to Bogota. At that point, we stopped any further discussion and he was read his rights.

Q And who read him his rights, sir?

A I did.

Q And did you read him his rights from a form?

A Yes, sir.

Q And is there -- And what is the form that you used?

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2 A It is a Department of Drug Enforcement
3 Administration 13-A.

4 Q And can you tell us what those rights were
5 that you advised Mr. Di Camillo of?

6 A I advised that he had the right to remain
7 silent, that he had the right to consult an attorney, that
8 an attorney would be appointed for him if he couldn't
9 afford an attorney, that he could stop the questioning at
10 any time for the purposes of consulting an attorney.

11 Q And did you ask him whether he understood
12 those rights?

13 A Yes, he was asked that.

14 Q When was he asked that question, sir?

15 A Before each question on the form, the form
16 is printed and then it says "Do you understand that you
17 have the right to remain silent" also after each one he was
18 asked if he understood it.

19 Q And what if any conversations did Mr. Di
20 Camillo make while you were reading him his rights?

21 A After each sentence that I would make, Mr.
22 Di Camillo would indicate that "I want to talk to you, I
23 want to clear the air", words to that effect.

24 Q He was cooperative, would you say?

25 A Yes, sir.

A 108

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2 A He was asked --

3 Q The best that you can recall.

4 A He was asked how he got involved with the
5 shipment. He indicated that he was contacted by an indivi-
6 dual named Galeano, Hondo Galeano, to make arrangements for
7 the shipments. He received, he stated that he received
8 \$8,000 from Mr. Galeano with regard to this shipment. He
9 then indicated that he traveled to Columbia which he had
10 stated previously to make some sort of arrangement for the
11 shipment.

12 Q Did he mention a Mr. Knappstein?

13 A Yes. I believe that is the name, an indi-
14 vidual in Columbia who was also one of a freight forwarder
15 in Columbia.

16 Q And what other statements did he make with
17 respect to the shipment itself?

18 A Well at first he had indicated that he had
19 received a phone call from Mr. Galeano. Subsequently, he
20 said he met Mr. Galeano -- a girlfriend named Elisha.
21 When he was in Columbia Mr. Galeano asked him to take back
22 a suitcase and he refused and we asked him why he refused,
23 and he said he believed it contained stuff. He was also
24 asked if he was afraid of that suitcase why did you get
25 involved in this shipment which he indicated he wished

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the shipment didn't come in at all, and he indicated he was asked, "Do you think there was anything wrong with the shipment and he said, "Yes", and he was asked, "What did you think was wrong with the shipment" and he stated, "I believe it contains stuff."

Q Did you ask him what "Stuff" was?

A Yes, sir. He was asked that.

Q And what was the response to that?

A He wouldn't respond to anything definite.

It could have been anything. As far as the suitcase goes, when he was asked that he indicated it would be narcotics. As far as the shipment went, when he was asked "What did you think stuff was", it could mean anything, diamonds, anything.

MR. RUSSO: Your Honor, might we have a brief side bar now?

(Side bar as follows:)

MR. RUSSO: Your Honor, I've already advised him of a redacted statement but I just want to be certain that Mr. Lewis' client does not leak out. I'm certain that he knows the statement was redacted, but I'd like to be extra careful on this.

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2 to talk with us. He insisted that he talk with us and he
3 insisted that he wanted to talk with me alone.

4 Q What if anything happened after he wished to
5 speak to you alone?

6 A I obliged him and Mr. Di Camillo and I left
7 the room and went outside to a corridor.

8 Q And what happened in the corridor?

9 A In the corridor we spoke further for over
10 an hour.

11 Q Were you seated in the corridor or were you
12 standing?

13 A No, we were walking up and down the corridor.

14 Q Can you tell the jury any statements you made
15 to Mr. Di Camillo or he made to you during that period of
16 the interview?

17 A Yes. He indicated again that he had met Mr.
18 Galeano through his girlfriend, Elisha, that he didn't want
19 to get her involved at the time. I told him it is not a
20 matter of, you can't get somebody involved. Either they
21 participated or they didn't participate. He indicated that
22 he and Elisha had received on at least two other occasions
23 sums of money from Mr. Galeano and that they had exchanged
24 it within a from of small bills and they had exchanged, I
25 believe it was, at Elisha's bank for large bills.

(Whereupon the Jury entered the courtroom)

MR. RUSSO: Your Honor, the Government calls
Mr. Lapes.

P E T E R J. L A P E S, having first been
duly sworn by the Clerk of the Court was examined
and testified as follows:

THE CLERK: Please state your name.

THE WITNESS: Peter J. Lapes.

THE CLERK: Please spell your name.

THE WITNESS: L-A-P-E-S.

DIRECTION EXAMINATION BY

MR. RUSSO:

Q Mr. Lapes, by whom are you employed?

A Dahill Moving and Storage Company.

Q In what capacity?

A Assistant Vice President.

Q And how long have you been so employed?

A Three years.

Q And prior to that what were you doing, sir?

A I was the International Operation Manager
for the Aero Mayflower Transit Company.

Q And was that also involved in the shipping and
moving business?

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A Yes, it is.

Q What are your present responsibilities, sir,
as Vice President of Dahill?

A For Administration in the areas of transportation and for all international operations.

Q And would you tell briefly what your responsibilities were in your previous position?

A I was responsible for all international operations for Mayflower.

Q And what did that entail, those responsibilities?

A The transportation of goods from one country to another.

Q Now, do you know an individual by the name of Lee DiCamillo?

A Yes, I do.

Q And who is Mr. Di Camillo?

A He's a commissioned salesman for Dahill Moving and Storage.

Q And how long has been so employed?

A Approximately a year.

Q And you see Mr. Di Camillo present in the courtroom today?

A Yes, I do.

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Q And could you indicate who that individual is to the jury?

A The gentleman in the burgandy jacket.

MR. RUSSO: Indicating the Defendant Di Camillo.

Q Now, did you have a conversation, sir, with Mr. Di Camillo about a trip to Bogota, Columbia?

A Yes, I did.

Q And can you tell us approximately when that was?

A In February of this year.

Q Can you be more specific?

A Mid February.

Q Before, well -- Withdrawn.

Can you tell us who was present and what was said at that conversation, sir?

A Myself, Mr. Di Camillo, Michael Di Bastista, (ph) who's the Chairman of the Board of Dahill and Richmond Masterson, who's the Vice President of Sales of Dahill.

Q And what was the nature of that conversation? Who called the meeting?

A The meeting was called by Mr. Di Bastista. Mr. Di Camillo came in to discuss his upcoming trip to Columbia.

Q What, if anything, did Mr. Di Camillo say

1
2 at that meeting?

3 A He said that his client, his potential client
4 was paying for his trip and expenses to go to Columbia.
5 Our company would not cover any expenses and/or his time
6 to take such a trip.

7 Q What did he say about his client? Did he
8 give you a name?

9 A I don't recall.

10 Q Did he tell you the nature of the trip, why
11 he was going?

12 A To inspect the shipper's facilities in
13 Columbia.

14 Q Now, what, if anything, did you say at that
15 meeting, sir?

16 A It appeared to me to be unheard of that the
17 shipper was paying for this salesman's trip to go down to
18 Columbia?

19 Q What do you mean "it was unheard of"?

20 A In the five years I've been involved in
21 transportation, I've never heard of that being done.

22 Q What type of arrangement are you referring
23 to as never having been done?

24 A First of all, the shipper paying for the
25 salesman's trip and secondly, at that meeting, Mr. DiCamillo

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presented \$8,000 in cash which he said he obtained from his client.

Q And did you see that cash money?

A Yes, I did.

Q And what form was it in, if you recall?

A It was in bills, in eight packets of bills.

Q Large quantities I believe, they were hundreds.

Q And did you examine any of those packets?

A I did look at one of the packets, yes.

Q And what did Mr. Di Camillo want, do you know, with those bills, if you can recall?

A He wanted Dahill to hold it for safe keeping in a safe.

Q Did he want that placed in a Dahill Account?

A No.

Q Did he tell you who he received the bills from?

A From his client.

Q But he didn't give a name?

A No. I don't recall the name.

Q And did he have a receipt?

A No.

Q Did you speak to him about that?

A Yes, I thought it a bit out of the ordinary

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that whoever gave him \$8,000 in cash didn't ask him to sign a receipt.

Q And did you indicate that to Mr. Di Camillo?

A Yes, I did.

Q In summary, Mr. Lapes, what was the position that Dahill took about that trip?

MR. LOPEZ: Objection, your Honor. If it is conversation with Mr. Di Camillo, that's fine. I have no objection.

MR. RUSSO: Yes, your Honor. I'm referring to the position taken orally with Mr. De Camillo at that meeting.

A We instructed Mr. Di Camillo not to go on the trip.

Q Do you know whether or not Mr. Di Camillo did go to Bogota?

A I believe he did.

Q And was he acting as an independant in doing that?

A Yes, he was.

Q Was he authorized in any way by Mayhill -- Dahill Mayflower?

A No, he was not.

THE CLERK: Three page document marked for

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identification as Government's Exhibit 23.

(So marked)

Q Now, Mr. Lapes, I show you Government's No. 23 for identification and I ask you if you recognize that particular document?

(Showing to the witness)

A Yes, I do.

Q And can you tell the jury what that document is?

A It is a document that -- a transmittal letter from the moving company that we do business with in Columbia.

Q And what was the name of that?

A Hoffis (ph) Moving Service.

Q And how long has Dahill been doing business with

A For several years.

Q And where are they located, if you know?

A In Bogota.

Q Now, I know that there are some other papers with the first page, can you tell the jury what those pages are?

A They are photocopies of invoices that we received with the documents from Columbia.

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1
2 Q And was there any other documents that were
3 forwarded with that letter, sir?

4 A Yes. An original airway bill from Avianca
5 Airlines, airbill 1342115245.

6 Q Now, I show you Government's Exhibit No. 1
7 in evidence and ask whether that is the airway bill that
8 you just referred to as having been shipped with that letter?

9 A Yes, it is.

10 Q And what did you say that airway bill indi-
11 cated to you, sir?

12 A It indicates a shipment of two containers,
13 560 kilos.

14 Q Now, at that point, sir, do you recall
15 approximately when you received that correspondence?

16 A In March.

17 Q And did you receive it personally, sir?

18 A Yes.

19 Q What if anything did you do upon receipt of
20 these papers?

21 A I held them and pending arrival of the
22 shipment --

23 Q And did there come a time that the shipment,
24 that you were informed that the shipment had arrived?

25 A Yes. I received a call from Pan American

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Airways who is Avianca's cargo agent in New York.

Q And what if anything did you do at that point?

A Pan Am had told me that they did have --
MR. LOPEZ: Objection to conversations with
Pan Am.

THE COURT: Sustained.

Q Were there any great charges due and owing on that, sir?

A Yes.

Q Do you know how much?

A \$780 odd dollars.

Q And what if anything did you do at this point?

A I spoke to Mr. Di Camillo and told him that before the shipment could be picked up from the airport that Pan Am wanted \$780 some odd dollars for payment of the air freight charges.

Q Dahill wouldn't pay for it?

A I also stated that being this was not an established account that Dahill would not advance the air freight charges.

Q What if anything did Mr. Di Camillo say?

A He said that there would be no problem and he

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would get the money for me.

Q Did he say where he would get the money?

A No.

Q What occurred next, sir?

A The next thing Mr. Di Camillo gave me was a money order to cover the air freight charges.

Q And do you recall what date it was that you received that money order?

A Not exactly.

Q Well, do you recall whethere it was relative to the day that the truckers went out to pick it up?

A It was before that. The day before.

Q The day before? Approximately what time of day was it?

A It was in the morning.

Q And the money order that Mr. Di Camillo gave you, what amount was that?

A \$780.

Q And to whom was it payable?

A Dahill Moving and Storage.

Q And was there a name typed on that particular --
MR. LEWIS: Objection, your Honor. May we approach the bench?

THE COURT: All right.

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Lapes/direct/Russo

A224

THE COURT: But it is possible?

MR. LEWIS: Yes, it is possible.

THE COURT: This case could go to the jury tomorrow?

MR. LOPEZ: Or we can be at least summing up tomorrow. I mean, your Honor may wish to charge on Thursday morning.

THE COURT: Well, let's see. I mean I just as soon get it.

MR. LOPEZ: What's convenient to the Court. Whatever your Honor wishes, we'll work with, your Honor.

(In open court, in front of the jury)

EXAMINATION BY

MR. RUSSO:

Q Mr. Lapes, did you receive a money order for the freight charges?

A Yes, I did.

Q From whom did you receive that?

A From Mr. Di Camillo.

Q When did you receive that?

A Nine days before the shipment was picked up.

Q And how did you receive that?

A By hand.

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852-7105

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2 L E E D I C A M I L L O, having first been
3 duly sworn by the Clerk of the Court, was examined
4 and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. LOPEZ:

7 Q Please speak in a loud voice so we can all
8 hear you, Mr. Di Camillo.

9 Mr. Di Camillo, how old are you?

10 A Forty years old.

11 Q And where were you born?

12 A Brooklyn.

13 Q And have you ever been convicted of a crime?

14 A No, sir.

15 Q Now, are you married, sir, or divorced?

16 What is your marital status?

17 A I'm divorced.

18 Q And how long have you been separated and
19 divorced from your wife?

20 A Approximately four years.

21 Q And do you have any children?

22 A Yes.

23 Q Tell us a little bit about your employment.

24 Where are you currently employed now?

25

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Di Camillo/direct/Lopez

A331

A Dahill Mayflower.

Q How long have you been employed by Mayflower?

A Approximately 13 months.

Q What is your position with Dahill Mayflower?

A District Manager.

Q How are you paid as far as salary is concerned for your services?

A I'm given a draw every week plus expenses every week.

Q Now, how much are you paid each week?

A \$200.

Q What are you paid for expenses?

A \$40.

Q \$40. Is there -- What do the expenses cover?

A Transportation, getting back and forth, on the job.

Q Now, you mentioned that this is a draw. A draw on commission, is that correct?

A A draw against commissions.

Q Against commissions. Now how do you work as far as the commissions are concerned. Will you explain it to us?

A Yes. On every job we go on we -- it is required by Interstate Commerce Commission to give an individual

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understand the line of work I'm in, transportation business.

Q Did he indicate to you what kind of work he was in?

A He indicated that he was very interested in having samples and -- shipped into this country, and to get a market here in this country on samples of a novelty type sample.

Q Well, did he tell you from what country he wanted to import these novelties?

A Colombia.

Q Please keep your voice up.

Now, how many times did you meet with Mr. Galeano?

A I would say a few times.

Q Now, on any of these future occasions, that you met with Mr. Galeano, did you meet anyone else in his company?

A Yes.

Q Who did you meet in his company?

A Besides Piegad?

Q Uh huh.

A I met Victor and Gomez and his brother Mr. Galeano.

Q What was Mr. Galeano's brother's name?

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A Hondo, from what I understand.

Q And the Galeano that you met was Mario, is that correct?

A Excuse me, sir?

Q You told us that the Galeano you met, his first name was Mario, is that correct?

A Yes.

Q Now, this Victor that you met, do you see him in the courtroom?

A Yes, sir.

Q And could you point him out, please?

A The gentleman with the brown suit and white stripes.

MR. LOPEZ: May it please the Court, Victor Agudelo-Liano has been identified.

Q Now, on the occasions that you met Mario Galeano, and Victor, approximately when were those dates? These occasions?

A I would say around the holiday season, December, January.

Q And where would you meet with Mario Galeano's brother?

A Around that time, sir?

Q Well, did your relationship with Mario Galeano

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formalize itself into a buisness relationship, didn't it?

A Yes.

Q When was that, please tell about that.

A Well, there again, Mr. Galeano, Fernando Galeano also expressed an interest in exporting from Colombia into the United States on novelty furniture and samples and that he was affiliated with industries that are located in Colombia.

Q Did he ever tell you that he wanted to use Dahill or that he wanted to use your services?

A Yes.

Q When did he tell you this?

A After he asked me some question, he became very interested in what type of services we rendered. When I say "we" I mean Dahill Mayflower.

Q When was this conversation? What day? What month? What year, approximately? If you recall?

A It was approximately January.

Q Of 1977?

A Yes.

Q This year. And as a result of that conversation with Mario Galeano did you do anything?

A Yes, ...

Q What did you do, sir?

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913 7106

A He expressed a desire to see our operations and I took him down at Mayflower at 802 Coney Island.

Q Did you introduce him to anyone at Dahill?

A Yes.

Q Who did you introduce him to?

A I introduced him to Carmine, who is the house manager, also to Andre Mantenao (ph) who is the vice president of Dahill Mayflower.

Q And who was Mario Galeano -- What was done at Dahill Moving, did he say anything, did you show him anything?

A Our warehouse manager, Carmine, showed him our operations in the warehouse, how things could come in packed and prepared and the care that is taken in exporting or importing any items.

Q After that visit to Dahill, did you have any future conversation with Mario Galeano?

A Yes, sir.

Q And when and where did these conversations take place and what happened?

A Where did they take place?

Q Yes. Where did they take place?

A He would come to my home on occasions.

Q And where were you living at the time?

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1
2 A I had a loan with them. I had a checking
3 account and a savings account.

4 Q You say you have a loan with them?

5 A Yes, sir.

6 Q How much is that loan for?

7 A I would say over \$2,000.

8 Q And are you the signer on the loan?

9 A I am one of the signers.

10 Q Who is the other signer?

11 A The co-signer.

12 Q The co-signer?

13 A Michael Di Battista, chairman of the board of
14 Dahill Mayflower.

15 Q He co-signed the loan for you there?

16 A Yes.

17 Q What -- When you went to the bank, what did you
18 do with the money?

19 A I changed those bills for large bills.

20 Q How did you do this?

21 A I went to the one -- one of the officers,
22 explained to them I had small bills, and if they would
23 count them and change them into large bills.

24 Q Did you provide them with any information with
25 regard to this?

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- 1
2 A Yes, sir.
3 Q What information did you provide to them?
4 A My name, my account number, my social security
5 number.
6 Q Did they change the money for you?
7 A Yes, sir.
8 Q And what did you do with that money?
9 A I went to the office of Dahill Mayflower
10 at 602 Coney Island Avenue.
11 Q And did you speak with anyone with regard to
12 this?
13 A Yes.
14 Q Who did you speak to?
15 A I spokewith Michael Di Battista.
16 Q Who is he again?
17 A Chairman of the board of Mayflower.
18 Q Yes.
19 A I spoke with Richard Masterson.
20 Q His position?
21 A Senior Vice President.
22 Q Who else?
23 A Peter Lapes who was there also, and another
24 gentleman whom I don't know. I believe he was affiliated
25 with the phone company, who had been at the office at that

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Di Camillo/direct/Lopez

A346

time.

Q And did you discuss the \$8,000?

A Yes.

Q What was the conversation between yourself and Mr. Lapes, Mr. Masterson and Mr. Di Battista?

A Well, there were rather mixed emotions there and I brought over the money to Mr. Di Battista. He went into the office where Mr. Masterson was and Mr. Lapes, this other gentleman, and explained to them that this money is to be used for any future business we would have with the nature of the business and that I always keep them informed of my movements and steps.

Q Had you told them you were trying to develop an account in Colombia?

A Oh, yes.

Q When did you tell them this approximately?

A Oh, well, in advance of me going there with the \$8,000.

Q Well, can you tell the month?

A Perhaps January.

Q 1977?

A I believe so.

Q Now, did you mention anything about going down to Colombia at the time?

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1
2 A Yes, sir.

3 Q Tell us the whole conversation and what the
4 reaction of Dahill Mayflower was?

5 A I was not ordered not to go. Mr. Di Battista
6 felt that he should not pay the expenses of going. I was
7 told that I was not restricted and we were rather optom-
8 istic. Richard Masterson was rather optomistic. We were to
9 act as an agent for them and the future of increased business,
10 there's always a possibility.

11 Q What was Mr. Lapes' view?

12 A Perhaps that I shouldn't go.

13 Q What was the view with regard to the \$8,000?

14 A Well, I had asked for, if they would give me a
15 receipt for the \$8,000 if I recall, and the gentleman's
16 opinion I believe there was to return it which I did.

17 Q Now, prior to returning it did you indicate
18 to anyone there that you would go to Colombia to see if you
19 can develop this account?

20 A Prior to returning there, yes.

21 Q Now, you said you indicated that you returned
22 the \$8,000, is that correct?

23 A Yes.

24 Q When did you return the \$8,000?

25 A Shortly thereafter, yes.

Q Well was it within days, was it within a week, try to remember?

A I think it was within days.

Q And who did you return it to?

A Mr. Galeano.

Q Which of the Galeanos?

Q Mario Galeano.

Q And where did you return it to?

A At my residence.

Q At the time that you returned this money to Mr. Galeano was his brother with him, if you remember?

A I don't believe his brother was with him yet.

Q Now, thereafter, did you go to Colombia?

A Yes, sir.

Q And did you go to Colombia with anyone?

A Yes, sir.

Q And who did you go to Colombia with?

A Mr. Gomez.

Q Do you know his first name?

A Oscar.

Q Oscar Gomez?

A Yes.

Q Now, did you purchase or obtain an air

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Di Camillo/direct/Lopez

A 349

ticket on Avianca?

A Yes, sir.

Q I show you Government's Exhibit 21 and ask you,
if that is the jacket of the air ticket which you utilized
in flying down to Bogota?

(Handing to the witness)

A Yes, sir.

Q How was that ticket given to you?

A I purchase it, sir?

Q How much did the ticket cost?

A If I remember correctly, it was over \$400.

Q Was that a round trip ticket?

A Yes, sir.

Q And who gave you the money for that ticket?

A Mr. Gomez.

Q Was that Oscar Gomez.

Q And where did he give you the money for that
ticket?

A At my residence.

Q Now, this Mr. Gomez, how many times have you
met him approximately since January '77 through March?

A I could speculate a few times.

Q And where did you meet Mr. Gomez?

A At my residence.

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Di Camillo/direct/Lopez

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Q How did you get his name?

A I got his name through Peter Lapes.

Q Was he the representative or the agent for Dahill Moving in Bogota?

A Well, it is my understanding when I had inquired whom should I contact in Colombia, I was told to ask Peter Lapes whom it is to my knowledge at that time was the international operations manager, and he said he would get in touch with a Mr. Jay Goldberg who is also, I understand, a broker and in turn gave me the name George Knappstein.

Q Did your company know that you were going to Bogota, Colombia?

A Yes, sir.

Q Did you advise them that you were leaving for Bogota, Colombia?

A Yes, sir.

Q And that you were going to be going for a few days?

A Yes, sir.

Q While you were in Bogota or out of New York, did you call your company?

A Yes.

Q Who did you speak with?

A Mr. Di Battista.

A 135

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- 1
2 A I did not allow them to, sir.
3 Q Did they make any other offers?
4 A Yes, sir.
5 Q What else?
6 A Being that I was leaving so soon they wanted
7 to give me a suitcase.
8 Q Didn't you go down with a suitcase?
9 A I went down with my suitcase.
10 Q They wanted to buy one for you?
11 A Yes, sir.
12 Q Was that suitcase supposed to be for you?
13 A That was my understanding, it was.
14 Q Did you ever see that suitcase?
15 A No.
16 Q Did you receive the suitcase?
17 A No, sir.
18 Q So you neither received the suitcase nor the
19 suitcase, is that correct?
20 A That is correct.
21 Q Is that right?
22 A That is correct.
23 Q All right. Now, did you return to New York?
24 A From Colombia?
25 A Yes, during the month of February?

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852-7105

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Di Camillo/direct/Lopez

A359

A During the month of February, yes, I returned to New York.

Q And approximately when did you arrive in New York?

A After I left Colombia?

A Yes.

A The latter part of that week.

Q Did you stop any other place?

A Yes, sir.

Q Where did you stop?

A Well, I went to see my Dad in Florida who was in the hospital.

Q And after that visit with your father, did you come to New York?

A Yes, sir.

Q Now, when you returned from Bogota, did you return with anyone?

A Myself, sir.

Q Mr. Gomez did not accompany you?

A No, sir.

Q And Mr. Galeano did not accompany you?

A No, sir.

Q Now, you were advised that the shipment that you had amde arrangements for over February 20th, had in

A 107

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fact arrived in New York, is that correct?

A Yes, sir.

Q And approximately when were you advised of the arrival of this shipment? What date, approximately?

A I can only approximate some time in March I believe.

Q And taking you back to Bogota, were you, while you were making the arrangements for this shipment, were you told by anybody to whom the shipment was to be sent?

A Yes, sir.

Q Who was the shipment ultimately to be sent to?

A To a Mr. Carlos Rodriguez.

Q Was an address given to you?

A yes, sir.

Q And did you make a notation of this address?

A Yes, I did, sir.

Q I show you Defendant's Exhibit H.

(Handing to the witness)

You received the address of Carlos A. Rodriguez in Bogota, Columbia, is that correct?

A That is correct, sir.

Q And who gave you this address and name?

A Mr. Galeano.

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us what you did?

A I had called Mr. Galeano and advised him that payment had to be made.

Q How much payment did you advise him had to be made?

A The amount of the freight bills that Peter Lapes advised me that he had wanted for the company.

Q And what did Mr. Galeano say?

A That he would bring it to me.

Q Did he tell you in what form he would bring it to you?

A First he said cash.

Q And what did you tell him?

A First he said cash.

Q And what did you tell him?

A I'd prefer a money order or a check of some nature.

Q And did you tell him how you wanted the check made out?

A Yes, sir.

Q And how did you want the check made out?

A To Dahill Mayflower.

Q Now, did you write -- I show you Government's Exhibit 17 and ask you to look at the card, that is your

A 139

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I believe his name is.

Q Was this an initial meeting with the agents?
Was this at the Dahill Moving Offices?

A Yes, sir.

Q Was this on Coney Island Avenue in Brooklyn?

A Yes, sir.

Q Did you have a conversation with him?

A Yes, sir.

Q What was that conversation?

A They asked me if I would help them or assist them in any way I can in reference to this particular shipment that arrived and I said I would do all I could to be cooperative.

Q What? Keep your voice up?

What did you tell them?

A That I had been in Bogota and I had showed them my cancelled airline ticket, photograph of whatever other papers. I showed them that pertained to the shipment that I could be of assistance to them.

Q And as a result of that conversation, did you go anywhere with those agents?

A Yes, sir.

Q Where did you go?

A What airport?

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Di Camillo/direct/Lopez

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Q What airport?

A Kennedy Airport.

Q Did you go in your car?

A Yes.

Q Did you go with them?

A Yes.

Q Whose car?

A Mr. Priore.

Q When you got to the airport did you go to any -- to any specific place, go to any offices?

A Yes, sir.

Q Where did you go?

A To the office of the agents.

Q And what agents did you speak with?

A There were many agents there, sir. To the best of my recollection there was an, I believe, Mr. Cipriano, Mr. Kennedy, as I recall a Mr. Sharkey was there, Mr. Tobin.

Q And did these agents speak to you at different times?

A Yes, sir.

Q And did you indicate to them what information you -- What information did you relate to them, what you related to us, more or less?

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A Yes, sir.

Q Did you indicate to them that you desired to cooperate?

A Yes, sir.

Q Now, Mr. Di Camillo, did you have positive knowledge that there was nay contraband whatsoever in the shipment that you arranged for in Bogota, Colombia and which arrived here on March 16?

A No, sir.

Q Did you know that there was cocaine secreted on that shipment?

A No, sir.

Q Did you know or participate in any way in the smuggling of any contraband into the country?

A No, sir.

Q Now, Mr. Di Camillo, did you -- You received \$8,000 cash without giving a receipt? Is that correct?

A Yes, sir.

Q Well, didn't you find that somewhat strange?

A Yes, sir.

Q You were also given an air ticket to Colombia and a thousand dollars in Colombia for expenses, didn't you find that somewhat strange?

A Yes, sir.

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Q You were also offered a new suit down there, in Colombia by these people, didn't you find that somewhat strange?

A Yes, sir.

Q You were also offered a suitcase in Colombia, isn't that right?

A Yes, sir.

Q Didn't they ask you to bring that back to this country, isn't that correct?

A Yes, sir.

Q Didn't you find that somewhat unusual?

A Yes, sir.

Q Did you become suspicious?

A Yes, sir.

Q Did you see any of these people have any offices?

A No, sir.

Q Did they take you to any of their banks?

A No, sir.

Q Did they give you any credit references?

A Excuse me, sir?

Q Did they give you any credit references as to who these people were?

A No, sir.

A 143

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1
2 Q Did you discuss all these things with the
3 personnel at Mayflower, at Dahill?

4 A Yes, sir.

5 Q Were you somewhat worried about this shipment?

6 A Yes, sir.

7 Q Could you put your finger on it?

8 A No, sir.

9 Q You wanted the business?

10 A Absolutely, sir.

11 Q Did they tell you there would be future
12 business?

13 A Yes, sir.

14 Q Did you feel that this might be a source of
15 revenue to you?

16 A Yes, I did.

17 Q At Dahill Mayflower were you kidded by your
18 Colombian account?

19 A Very much so.

20 Q Were you apprehensive?

21 A Very much so.

22 Q Were you turning over in your own mind the
23 fact that you wanted the business and that you really couldn't
24 put your finger on what was happening?

25 A Yes, sir.

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1
2 Q Could you just, in your own mind, the receipt
3 of \$8,000 cash, the offer of a new suit, the offer of a
4 valise, with the business account. Could you just balance
5 that in your own mind how do you explain that?

6 A Well, I thought perhaps it was the company
7 developing into a very large account for the business and for
8 myself and I did feel uneasy, and I did report everything to
9 my employers.

10 Q But you felt that, did you feel that because
11 you had no real actual knowledge you might be somewhat
12 paranoid about this matter?

13 A Yes.

14 Q When you refused to take that suitcase, was
15 it because you felt that maybe you might be being used?

16 A Yes. sir.

17 Q Now, tell me, when Agent Kennedy here and the
18 other agents questioned you at the airport, they didn't know
19 who you were, did they?

20 A No, sir.

21 Q They didn't know you had been in Colombia,
22 did they?

23 A No, sir.

24 Q You told your company and you told them, is that
25 correct?

A 145

1
2 A Yes, sir.

3 Q Did you ever tell them that you knew that
4 there was stuff in the shipment?

5 A No, sir.

6 Q Well, did you mention that you were fearful,
7 suspicious that there might be?

8 A Yes, sir.

9 Q Did you mention diamonds to them, did you tell
10 that to them, if you remember?

11 A I don't recall telling them anything about
12 diamonds.

13 Q Do you recall telling them that there possibly
14 might be drugs in the shipment?

15 A No, sir. I did not tell them.

16 Q Did they ask you who was the person who was
17 in charge of this business transaction that you were
18 arranging?

19 A Yes, sir.

20 Q Who did they say who did you say -- Excuse
21 me. Withdrawn.

22 Who did you say was in charge?

23 A Mr. Galeano.

24 Q Did you tell him that you did not want to
25 bring the suitcase that you were offered in Bogota to

A 146

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1

2

Q How old?

3

A 25.

4

Q And when did you come to the United States?

5

A On December 8th.

6

Q 1976?

7

A Yes.

8

Yes. '76.

9

Q And how did you come here? Did you come here

10

legally or illegally?

11

A Illegally, through Mexico.

12

Q And did you come to New York?

13

A Yes, to New York.

14

Q And when you came to New York where did you

15

live?

16

A I lived in Jamaica; 90-44 144th, I believe.

17

Q And what kind of house was this? Was this an

18

apartment house or a one, two, three family house?

19

What?

20

A It was a basement.

21

Q And was that the house that was owned by Mr.

22

S equin?

23

A Yes.

24

Q And how did you come to this house?

25

How were you recommended to this house?

A 147

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1
2 A A friend of mine lived there in the house.

3 Q And did you move in with this friend in the
4 basement apartment?

5 A Yes. He took me there. He was living there.

6 Q And were you living there with him?

7 A Yes.

8 Q And was the apartment already furnished?

9 A Yes. It had everything. It was complete.

10 Q And when you moved in, were you paying the
11 rent or were you sharing the rent with him, or what?

12 A At first he was paying.

13 Q And by the way, when you came to the United
14 States, when was that exactly?

15 A Yes. In December 8th, I came directly to the
16 house.

17 Q December 8th you came to the house in New
18 York?

19 A Yes.

20 Q And what name did you tell Mr. Seguin was your
21 name?

22 A Hiro Marine. (Phonetic).

23 Q And that wasn't your true name; was it?

24 A No, sir.

25 Q Why did you give him that name?

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Q Now, did you have a job while you were here in the United States?

A Yes.

Q And where did you work?

A At the Los Guadales Restaurant.

Q And is that in Jamaica, Queens?

A Yes. I believe it's located at 148th.

Q And what type of work did you do there?

A Well, I had to wash dishes, you know, general cleaning work; and to maintain and organize the basement, yes. The basement.

Q And how long did you work there?

A I started to work there on the second week of January.

Q And did you work there until you were arrested?

A Yes.

Q Now, did there come a time when you met a man named Carlos A. Rodriguez?

A Yes.

Q Where did you meet him?

A At the Los Guadales Restaurant.

Q And approximately when did you meet him for the first time?

A It was on the third week of February.

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1
2 It was my home.

3 Q Now, you mentioned that around a quarter after
4 twelve this Mr. Rodriguez invited you some place?

5 A Yes. It was a friend's house.

6 Q A friend of his or a friend of Mr. Rodriguez'?

7 A His friend.

8 Q And who was that friend?

9 A He was Mr. Lee.

10 Q Mr. DiCamillo?

11 A Yes.

12 Q And did you go over to his house?

13 A Yes. I was at his house.

14 Q And so who was there?

15 A There was a woman who opened the door, Mr.
16 Lee, and there was another man there. But I only saw part of
17 him out of the corner of my eye. Carlos Alberto was the
18 owner of the furniture, and myself.

19 Q What?

20 A Carlos Alberto, who was the owner of the
21 furniture, and myself.

22 Q When you were at the apartment what happened
23 at the apartment?

24 A Well, we sat down for a while in the living
25 room. I had a few drinks.

1
2 coming in from Colombia?

3 A No.

4 Q And did you ever see him after that day?

5 A Yes.

6 I saw him on the third opportunity.

7 Q And where was that?

8 A At the restaurant.

9 Q And did he have any conversation with you
10 about furniture on that occasion?

11 A He talked to me about furniture, about the
12 furniture on the second opportunity.

13 Q And what did he say to you and what did you say
14 to him?

15 A He asked me whether I wanted to make a few
16 dollars, and I replied that I did.

17 And he told me that if I wanted, and I had no in-
18 convenience, he wanted me to take care or keep some furniture
19 for one or two days. I thought about it and I told him that
20 I had to ask permission from the owner of the house.

21 Q Did you ask permission from the owner?

22 A Yes. I asked him permission.

23 Q And did he give you permission? Or the lady
24 give you permission?

25 A Yes. The owners of the house gave me permission.

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1
2 Q And then, did you agree to accept this furn-
3 iture for Mr. Rodriguez?

4 A Yes.

5 Q By the way, how much money did he say that
6 he was going to pay you?

7 A He was going to give me \$50.00 or \$60.00.

8 Q And did he speak to you about signing for
9 the furniture?

10 A He told me that he would be present when the
11 furniture arrived, but in case that he wasn't, he auth-
12 orized me to sign if it was necessary to do so.

13 Q So that if he wasn't there -- I'm sorry --
14 so he said that he would be there when the furniture was
15 delivered?

16 A Yes. He told me that he was going to be present.

17 Q And he told you that if for any reason that he
18 wasn't you could sign his name; is that right?

19 A Yes.

20 That he authorized me to sign and with his name.

21 Q Now, by the way, had you ever heard any discuss-
22 ion at all about this furniture between anybody other than
23 Mr. Rodriguez or yourself?

24 A No. It was only with him.

25 Q And by the way, after you were arrested at

1
2 the house while you were still there in Mr. Seguin's house,
3 did you tell the arresting officers about being offered
4 \$50.00 to accept the furniture?

5 A Yes, sir.

6 MR. LEWIS: Can I just have Government's
7 Exhibit 20, the report.

8 Mr. Russo, since the witness cannot read
9 English, can I have a concession from you that it's
10 indicated in this report that he said that he was to
11 receive \$50 or \$60?

12 MR. RUSSO: Yes, your Honor.

13 MR. LEWIS: Okay, thank you.

14 Q Now, when the furniture -- on March 16th,
15 directing your attention to March 16th, was the furniture
16 delivered to the house?

17 A Yes, sir.

18 Q And was the furniture covered with anything
19 when it was brought into the house?

20 A The piece that they brought in was covered
21 with a green cloth, dark green cloth.

22 Q And did you know that there was any kind of
23 drugs hidden in the furniture?

24 A No, I did not know.

25 Q And by the way, from the time that you came to

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LOPEZ

STATE OF NEW YORK)
 : SS.
COUNTY OF RICHMOND)

ROBERT BAILEY, being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N. Y. 10302. That on the 26 day of April 1978 deponent served the within *Appendix* upon U.S. Atty. East. Dist. of nY

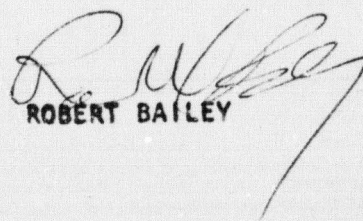
attorney(s) for

Appellee

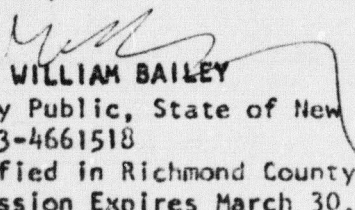
in this action, at

225 Cadman Plaza, East, Brooklyn, NY

the address(es) designated by said attorney(s) for that purpose by depositing 1 copies of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States post office department within the State of New York.


ROBERT BAILEY

Sworn to before me, this 26 day
of April, 1978, 1977X


WILLIAM BAILEY
Notary Public, State of New York
No. 43-4661518
Qualified in Richmond County
Commission Expires March 30, 1979